123 S.Ct. 2325

539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304, 71 USLW 4498, 91 Fair Empl.Prac.Cas. (BNA) 1761, 84 Empl. Prac. Dec. P 41,415, 177 Ed. Law Rep. 801, 03 Cal. Daily Op. Serv. 5378, 2003 Daily Journal D.A.R. 6800, 16 Fla. L. Weekly Fed. S 367

(Cite as: 539 U.S. 306, 123 S.Ct. 2325)

Briefs and Other Related Documents

Supreme Court of the United States
Barbara GRUTTER, Petitioner,
v.
Lee BOLLINGER et al.
No. 02-241.

Argued April 1, 2003.
Decided June 23, 2003.
Rehearing Denied Aug. 25, 2003.
See 539 U.S. 982, 124 S.Ct. 35.

Law school applicants who were denied admission challenged race-conscious admissions policy of state university law school, alleging that the admissions policy encouraging student body diversity violated their equal protection rights. The United States District Court for the Eastern District of Michigan, Bernard A. Friedman, J., 137 F.Supp.2d 821, held that the law school's consideration of race and ethnicity in its admissions decisions was unlawful and enjoined law school from using race as a factor in its admissions decisions. Appeal was taken. Sitting en banc, the United States Court of Appeals for the Sixth Circuit, 288 F.3d 732, Boyce F. Martin, Jr., Chief Judge, reversed the District Court's judgment and vacated the injunction. Certiorari was granted. The United States Supreme Court, Justice O'Connor, held that: (1) law school had a compelling interest in attaining a diverse student body; and (2) admissions program was narrowly tailored to serve its compelling interest in obtaining the educational benefits that flow from a diverse student body, and thus did not violate the Equal Protection Clause.

Affirmed.

Justice Ginsburg concurred and filed opinion in which Justice Breyer joined.

Justice Scalia concurred in part, dissented in part, and filed opinion in which Justice Thomas joined.

Justice Thomas concurred in part, dissented in part, and filed opinion in which Justice Scalia joined in part.

Chief Justice Rehnquist dissented and filed opinion in which Justice Scalia, Justice Kennedy, and Justice Thomas joined.

Justice Kennedy dissented and filed opinion.

West Headnotes

[1] Constitutional Law ⇨215
92k215 Most Cited Cases
All racial classifications imposed by government must be analyzed by a reviewing court under "strict scrutiny"; this means that such classifications are constitutional under equal protection clause only if they are narrowly tailored to further compelling governmental interests. U.S.C.A. Const.Amend. 14.

[2] Constitutional Law ⇨215
92k215 Most Cited Cases
Whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection. U.S.C.A. Const.Amend. 14.

[3] Constitutional Law ⇨215
92k215 Most Cited Cases
When race-based action is necessary to further a compelling governmental interest, such action does not violate the constitutional guarantee of equal protection so long as the narrow-tailoring

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requirement is also satisfied. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law ⇐215
92k215 Most Cited Cases
Context matters when reviewing race-based governmental action under the Equal Protection Clause. U.S.C.A. Const.Amend. 14.

[5] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[5] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
State university law school had a compelling interest in attaining a diverse student body, for purposes of determining whether race-conscious admissions policy violated the Equal Protection Clause; the educational benefits that diversity was designed to produce were substantial, including to promote cross-racial understanding, to help break down racial stereotypes and to enable students to better understand persons of different races, to promote learning outcomes, to better prepare students for an increasingly diverse workforce and society, and to better prepare students as professionals. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law ⇐215
92k215 Most Cited Cases
Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still constrained under equal protection clause in how it may pursue that end: the means chosen to accomplish the government's asserted purpose must be specifically and narrowly framed to accomplish that purpose. U.S.C.A. Const.Amend. 14.

[7] Constitutional Law ⇐215
92k215 Most Cited Cases
Purpose of the narrow tailoring requirement, when determining whether racial distinctions are permissible under equal protection clause to further a
compelling state interest, is to ensure that the means chosen fit the compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype. U.S.C.A. Const.Amend. 14.

[8] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
To be narrowly tailored under equal protection clause, a race-conscious admissions program cannot use a quota system, and it cannot insulate each category of applicants with certain desired qualifications from competition with all other applicants; instead, a university may consider race or ethnicity only as a plus in a particular applicant's file, without insulating the individual from comparison with all other candidates for the available seats. U.S.C.A. Const.Amend. 14.

[9] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[9] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
State university law school's race-conscious admissions program was narrowly tailored to serve its compelling interest in obtaining the educational benefits that flow from a diverse student body, and thus such race-conscious policy did not violate the Equal Protection Clause; though the plan used race as a plus factor in law school admissions decisions, the law school engaged in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment, and, in addition, race-neutral alternatives such as a lottery system or decreasing the emphasis on grade point average (GPA) and Law School Admission Test (LSAT) scores were considered and would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both. U.S.C.A. Const.Amend. 14.

[10] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[10] Constitutional Law ⇐220(3)

539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304, 71 USLW 4498, 91 Fair Empl.Prac.Cas. (BNA) 1761, 84 Empl. Prac. Dec. P 41,415, 177 Ed. Law Rep. 801, 03 Cal. Daily Op. Serv. 5378, 2003 Daily Journal D.A.R. 6800, 16 Fla. L. Weekly Fed. S 367

(Cite as: 539 U.S. 306, 123 S.Ct. 2325)

92k220(3) Most Cited Cases
State university law school's race-conscious admissions program with the goal
of attaining a critical mass of underrepresented minority students did not operate as an impermissible quota in violation of equal protection clause; although the school's admissions officers consulted daily reports which kept track of the racial and ethnic composition of the class, the officers testified without contradiction that they never gave race any more or less weight based on the information contained in these reports, and, as was inconsistent with a quota, the number of underrepresented minority students who ultimately enrolled in the law school varied considerably from year to year. U.S.C.A. Const.Amend. 14.

[11] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
When using race as a "plus" factor in university admissions, equal protection clause requires that a university's admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application. U.S.C.A. Const.Amend. 14.

[12] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[12] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
Narrow tailoring under equal protection clause did not require that state university law school exhaust every conceivable race-neutral alternative to its race-conscious admissions program; narrow tailoring did, however, require serious, good faith consideration of workable race-neutral alternatives that would achieve the diversity the university sought. U.S.C.A. Const.Amend. 14.

[13] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
To be narrowly tailored under equal protection clause, a race-conscious admissions program must not unduly burden individuals who are not members of the favored racial and ethnic groups. U.S.C.A. Const.Amend. 14.

[14] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[14] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
State university law school's race-conscious admissions program was not unduly harmful to nonminority applicants, for purposes of determining under equal protection clause whether the admissions program was narrowly tailored to serve its compelling interest in obtaining the educational benefits that flow from a diverse student body, given that the law school considered all pertinent elements of diversity during the application review process, and could select nonminority applicants who had greater potential to enhance student body diversity over underrepresented minority applicants. U.S.C.A. Const.Amend. 14.

[15] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
Race-conscious university admissions policies must be limited in time, under equal protection clause; this requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. U.S.C.A. Const.Amend. 14.

****2327** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

The University of Michigan Law School (Law School), one of the Nation's top law schools, follows an official admissions policy that seeks to achieve student body diversity through compliance with *Regents of Univ. of Cal. v. Bakke,* 438 U.S.

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265, 98 S.Ct. 2733, 57 L.Ed.2d 750. Focusing on students' academic ability coupled with a flexible assessment of their talents, experiences, and potential, the policy requires admissions officials to evaluate each applicant based on all the information available in the file, including a personal statement, letters of recommendation, an essay describing how the applicant will contribute to Law School life and diversity, and the applicant's undergraduate grade ****2328** point average (GPA) and Law School Admission Test (LSAT) score. Additionally, officials must look beyond grades and scores to so-called "soft variables," such as recommenders' enthusiasm, the quality of the undergraduate institution and the applicant's essay, and the areas and difficulty of undergraduate course selection. The policy does not define diversity solely in terms of racial and ethnic status and does not restrict the types of diversity contributions eligible for "substantial weight," but it does reaffirm the Law School's commitment to diversity with special reference to the inclusion of African-American, Hispanic, and Native-American students, who otherwise might not be represented in the student body in meaningful numbers. By enrolling a "critical mass" of underrepresented minority students, the policy seeks to ensure their ability to contribute to the Law School's character and to the legal profession.

When the Law School denied admission to petitioner Grutter, a white Michigan resident with a 3.8 GPA and 161 LSAT score, she filed this suit, alleging that respondents had discriminated against her on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981; that she was rejected because the Law School uses race as a "predominant" factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups; and that respondents had no compelling interest to justify that use of race. The District Court found the Law School's use of race as an admissions factor unlawful. The Sixth Circuit reversed, holding that Justice Powell's opinion in *Bakke* was binding precedent establishing ***307** diversity as a compelling state interest, and that the Law School's use of race was narrowly tailored because race was merely a "potential 'plus' factor" and because the Law School's program was virtually identical to the Harvard admissions program described approvingly by Justice Powell and appended to his *Bakke* opinion.

Held: The Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body is not prohibited by the Equal Protection Clause, Title VI, or § 1981. Pp. 2335-2347.

(a) In the landmark *Bakke* case, this Court reviewed a medical school's racial set-aside program that reserved 16 out of 100 seats for members of certain minority groups. The decision produced six separate opinions, none of which commanded a majority. Four Justices would have upheld the program on the ground that the government can use race to remedy disadvantages cast on minorities by past racial prejudice. 438 U.S., at 325, 98 S.Ct. 2733. Four other Justices would have struck the program down on statutory grounds. *Id.*, at 408, 98 S.Ct. 2733. Justice Powell, announcing the Court's judgment, provided a fifth vote not only for invalidating the program, but also for reversing the state court's injunction against any use of race whatsoever. In a part of his opinion that was joined by no other Justice, Justice Powell expressed his view that attaining a diverse student body was the only interest asserted by the university that survived scrutiny. *Id.*, at 311, 98 S.Ct. 2733. Grounding his analysis in the academic freedom that "long has been viewed as a special concern of the First Amendment," *id.*, at 312, 314, 98 S.Ct. 2733, Justice Powell emphasized that the " 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation." *Id.*, at 313, 98 S.Ct. 2733. However, he also emphasized that "[i]t is not an interest in simple ethnic diversity, in which a

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specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups," that can justify using race. *Id.*, at 315, 98 S.Ct. 2733. Rather, "[t]he diversity that furthers a compelling state interest encompasses a far broader ****2329** array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." *Ibid.* Since *Bakke,* Justice Powell's opinion has been the touchstone for constitutional analysis of race-conscious admissions policies. Public and private universities across the Nation have modeled their own admissions programs on Justice Powell's views. Courts, however, have struggled to discern whether Justice Powell's diversity rationale is binding precedent. The Court finds it unnecessary to decide this issue because the Court endorses Justice Powell's view that student body diversity is a compelling state interest in the context of university admissions. Pp. 2335- 2337.

***308** b) All government racial classifications must be analyzed by a reviewing court under strict scrutiny. *Adarand Constructors, Inc. v. Peña,* 515 U.S. 200, 227, 115 S.Ct. 2097, 132 L.Ed.2d 158. But not all such uses are invalidated by strict scrutiny. Race-based action necessary to further a compelling governmental interest does not violate the Equal Protection Clause so long as it is narrowly tailored to further that interest. *E.g., Shaw v. Hunt,* 517 U.S. 899, 908, 116 S.Ct. 1894, 135 L.Ed.2d 207 . Context matters when reviewing such action. See *Gomillion v. Lightfoot,* 364 U.S. 339, 343-344, 81 S.Ct. 125, 5 L.Ed.2d 110. Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the government's reasons for using race in a particular context. Pp. 2337-2338.

(c) The Court endorses Justice Powell's view that student body diversity is a compelling state interest that can justify using race in university admissions. The Court defers to the Law School's educational judgment that diversity is essential to its educational mission. The Court's scrutiny of that interest is no less strict for taking into account complex educational judgments in an area that lies primarily within the university's expertise. See, *e.g., Bakke,* 438 U.S., at 319, n. 53, 98 S.Ct. 2733 (opinion of Powell, J.). Attaining a diverse student body is at the heart of the Law School's proper institutional mission, and its "good faith" is "presumed" absent "a showing to the contrary." *Id.*, at 318-319, 98 S.Ct. 2733. Enrolling a "critical mass" of minority students simply to assure some specified percentage of a particular group merely because of its race or ethnic origin would be patently unconstitutional. *E.g., id.*, at 307, 98 S.Ct. 2733. But the Law School defines its critical mass concept by reference to the substantial, important, and laudable educational benefits that diversity is designed to produce, including cross-racial understanding and the breaking down of racial stereotypes. The Law School's claim is further bolstered by numerous expert studies and reports showing that such diversity promotes learning outcomes and better prepares students for an increasingly diverse work force, for society, and for the legal profession. Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security. Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, *Sweatt v. Painter,* 339 U.S. 629, 634, 70 S.Ct. 848, 94 L.Ed. 1114, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity. Thus, the Law School has a compelling interest in attaining a diverse student body. Pp. 2338-2341.

***309** d) The Law School's admissions program bears the hallmarks of a narrowly tailored plan. To be narrowly tailored, a race-conscious admissions program cannot "insulat[e] each category of applicants with certain desired qualifications from ****2330** competition with all other applicants."

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Bakke, 438 U.S., at 315, 98 S.Ct. 2733 (opinion of Powell, J.). Instead, it may consider race or ethnicity only as a " 'plus' in a particular applicant's file"; *i.e.,* it must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight," *id.,* at 317, 98 S.Ct. 2733. It follows that universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks. See *id.,* at 315- 316, 98 S.Ct. 2733. The Law School's admissions program, like the Harvard plan approved by Justice Powell, satisfies these requirements. Moreover, the program is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application. See *id.,* at 317, 98 S.Ct. 2733. The Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. There is no policy, either *de jure* or *de facto,* of automatic acceptance or rejection based on any single "soft" variable. *Gratz v. Bollinger, post,* 539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257, 2003 WL 21434002, distinguished. Also, the program adequately ensures that all factors that may contribute to diversity are meaningfully considered alongside race. Moreover, the Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected. The Court rejects the argument that the Law School should have used other race-neutral means to obtain the educational benefits of student body diversity, *e.g.,* a lottery system or decreasing the emphasis on GPA and LSAT scores. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative or mandate that a university choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups. See, *e.g., Wygant v. Jackson Bd. of Ed.,* 476 U.S. 267, 280, n. 6, 106 S.Ct. 1842, 90 L.Ed.2d 260. The Court is satisfied that the Law School adequately considered the available alternatives. The Court is also satisfied that, in the context of individualized consideration of the possible diversity contributions of each applicant, the Law School's race-conscious admissions program does not unduly harm nonminority applicants. Finally, race-conscious admissions policies must be limited in time. The Court takes the Law School at its word that it would like nothing better than to find a race-neutral admissions formula and will terminate its use of racial ***310** preferences as soon as practicable. The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today. Pp. 2341-2347.

(e) Because the Law School's use of race in admissions decisions is not prohibited by the Equal Protection Clause, petitioner's statutory claims based on Title VI and § 1981 also fail. See *Bakke, supra,* at 287, 98 S.Ct. 2733 (opinion of Powell, J.); *General Building Contractors Assn., Inc. v. Pennsylvania,* 458 U.S. 375, 389-391, 102 S.Ct. 3141, 73 L.Ed.2d 835. P. 2347.

288 F.3d 732, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined, and in which SCALIA and THOMAS, JJ., joined in part insofar as it is consistent with the views expressed in Part VII of the opinion of THOMAS, J. GINSBURG, J., filed a concurring opinion, in which BREYER, J., joined, *post,* p. 2347. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which THOMAS, J., joined, *post,* p. ****2331** 2348. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SCALIA, J., joined as to Parts I-VII, *post,* p. 2350. REHNQUIST, C.J., filed a dissenting opinion, in which SCALIA, KENNEDY, and THOMAS, JJ., joined, *post,* p. 2365. KENNEDY, J., filed a dissenting opinion, *post,* p. 2370.

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***311** Justice O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether the use of race as a factor in student admissions by the University of Michigan Law School (Law School) is unlawful.

***312** I

A

The Law School ranks among the Nation's top law schools. It receives more than 3,500 applications each year for a class ***313** of around 350 students. Seeking to "admit a group of students who individually and collectively are among the most capable," the Law School looks for individuals with "substantial ***314** promise for success in law school" and "a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others." App. 110. More broadly, the Law School seeks "a mix of students with varying backgrounds and experiences who will respect and learn from each other." *Ibid.* In 1992, the dean of the Law School charged a faculty committee with crafting a written admissions policy to implement these goals. In particular, the Law School sought to ensure that its efforts to achieve student body diversity complied with this Court's most recent ruling on the use of race in university admissions. See *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) . ***315** Upon the unanimous adoption of the committee's report by the Law School faculty, it became the Law School's official admissions policy.

The hallmark of that policy is its focus on academic ability coupled with a flexible assessment of applicants' talents, experiences, and potential "to contribute to the learning of those around them." App. 111. The policy requires admissions officials to evaluate each applicant based on all the information available in the file, including a personal statement, letters of recommendation, ****2332** and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School. *Id.,* at 83-84, 114-121. In reviewing an applicant's file, admissions officials must consider the applicant's undergraduate grade point average (GPA) and Law School Admission Test (LSAT) score because they are important (if imperfect) predictors of academic success in law school. *Id.,* at 112. The policy stresses that "no applicant should be admitted unless we expect that applicant to do well enough to graduate with no serious academic problems." *Id.,* at 111.

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The policy makes clear, however, that even the highest possible score does not guarantee admission to the Law School. *Id.,* at 113. Nor does a low score automatically disqualify an applicant. *Ibid.* Rather, the policy requires admissions officials to look beyond grades and test scores to other criteria that are important to the Law School's educational objectives. *Id.,* at 114. So-called " 'soft' variables" such as "the enthusiasm of recommenders, the quality of the undergraduate institution, the quality of the applicant's essay, and the areas and difficulty of undergraduate course selection" are all brought to bear in assessing an "applicant's likely contributions to the intellectual and social life of the institution." *Ibid.*

The policy aspires to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." *Id.,* at 118. ***316** The policy does not restrict the types of diversity contributions eligible for "substantial weight" in the admissions process, but instead recognizes "many possible bases for diversity admissions." *Id.,* at 118, 120. The policy does, however, reaffirm the Law School's longstanding commitment to "one particular type of diversity," that is, "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers." *Id.,* at 120. By enrolling a " 'critical mass' of [underrepresented] minority students," the Law School seeks to "ensur[e] their ability to make unique contributions to the character of the Law School." *Id.,* at 120-121.

The policy does not define diversity "solely in terms of racial and ethnic status." *Id.,* at 121. Nor is the policy "insensitive to the competition among all students for admission to the [L]aw [S]chool." *Ibid.* Rather, the policy seeks to guide admissions officers in "producing classes both diverse and academically outstanding, classes made up of students who promise to continue the tradition of outstanding contribution by Michigan Graduates to the legal profession." *Ibid.*

B

Petitioner Barbara Grutter is a white Michigan resident who applied to the Law School in 1996 with a 3.8 GPA and 161 LSAT score. The Law School initially placed petitioner on a waiting list, but subsequently rejected her application. In December 1997, petitioner filed suit in the United States District Court for the Eastern District of Michigan against the Law School, the Regents of the University of Michigan, Lee Bollinger (Dean of the Law School from 1987 to 1994, and President of the University of Michigan from 1996 to 2002), Jeffrey Lehman (Dean of the Law School), and Dennis Shields (Director of Admissions at the Law School from 1991 ***317** until 1998). Petitioner alleged that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment; Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d; and Rev. Stat. § 1977, as amended, 42 U.S.C. § 1981.

Petitioner further alleged that her application was rejected because the Law School uses race as a "predominant" factor, ****2333** giving applicants who belong to certain minority groups "a significantly greater chance of admission than students with similar credentials from disfavored racial groups." App. 33-34. Petitioner also alleged that respondents "had no compelling interest to justify their use of race in the admissions process." *Id.,* at 34. Petitioner requested compensatory and punitive damages, an order requiring the Law School to offer her admission, and an injunction prohibiting the Law School from continuing to discriminate on the basis of race. *Id.,* at 36. Petitioner clearly has standing to bring this lawsuit. *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656, 666, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993).

The District Court granted petitioner's motion for class certification and for bifurcation of the trial into liability and damages phases. The class was

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defined as " 'all persons who (A) applied for and were not granted admission to the University of Michigan Law School for the academic years since (and including) 1995 until the time that judgment is entered herein; and (B) were members of those racial or ethnic groups, including Caucasian, that Defendants treated less favorably in considering their applications for admission to the Law School.' " App. to Pet. for Cert. 191a-192a.

The District Court heard oral argument on the parties' cross-motions for summary judgment on December 22, 2000. Taking the motions under advisement, the District Court indicated that it would decide as a matter of law whether the Law School's asserted interest in obtaining the educational benefits that flow from a diverse student body was compelling. ***318** The District Court also indicated that it would conduct a bench trial on the extent to which race was a factor in the Law School's admissions decisions, and whether the Law School's consideration of race in admissions decisions constituted a race-based double standard.

During the 15-day bench trial, the parties introduced extensive evidence concerning the Law School's use of race in the admissions process. Dennis Shields, Director of Admissions when petitioner applied to the Law School, testified that he did not direct his staff to admit a particular percentage or number of minority students, but rather to consider an applicant's race along with all other factors. *Id.*, at 206a. Shields testified that at the height of the admissions season, he would frequently consult the so-called "daily reports" that kept track of the racial and ethnic composition of the class (along with other information such as residency status and gender). *Id.*, at 207a. This was done, Shields testified, to ensure that a critical mass of underrepresented minority students would be reached so as to realize the educational benefits of a diverse student body. *Ibid.* Shields stressed, however, that he did not seek to admit any particular number or percentage of underrepresented minority students. *Ibid.*

Erica Munzel, who succeeded Shields as Director of Admissions, testified that " 'critical mass' " means " 'meaningful numbers' " or " 'meaningful representation,' " which she understood to mean a number that encourages underrepresented minority students to participate in the classroom and not feel isolated. *Id.*, at 208a-209a. Munzel stated there is no number, percentage, or range of numbers or percentages that constitute critical mass. *Id.*, at 209a. Munzel also asserted that she must consider the race of applicants because a critical mass of underrepresented minority students could not be enrolled if admissions decisions were based primarily on undergraduate GPAs and LSAT scores. *Ibid.*

The current Dean of the Law School, Jeffrey Lehman, also testified. Like the other Law School witnesses, Lehman did ***319** not quantify critical mass in terms of numbers or percentages. *Id.*, at 211a. He indicated that critical mass means numbers ****2334** such that underrepresented minority students do not feel isolated or like spokespersons for their race. *Ibid.* When asked about the extent to which race is considered in admissions, Lehman testified that it varies from one applicant to another. *Ibid.* In some cases, according to Lehman's testimony, an applicant's race may play no role, while in others it may be a " 'determinative' " factor. *Ibid.*

The District Court heard extensive testimony from Professor Richard Lempert, who chaired the faculty committee that drafted the 1992 policy. Lempert emphasized that the Law School seeks students with diverse interests and backgrounds to enhance classroom discussion and the educational experience both inside and outside the classroom. *Id.*, at 213a. When asked about the policy's " 'commitment to racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against,' " Lempert explained that this language did not purport to remedy past discrimination, but rather to include students who may bring to the Law School a perspective different from that of members

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of groups which have not been the victims of such discrimination. *Ibid.* Lempert acknowledged that other groups, such as Asians and Jews, have experienced discrimination, but explained they were not mentioned in the policy because individuals who are members of those groups were already being admitted to the Law School in significant numbers. *Ibid.*

Kent Syverud was the final witness to testify about the Law School's use of race in admissions decisions. Syverud was a professor at the Law School when the 1992 admissions policy was adopted and is now Dean of Vanderbilt Law School. In addition to his testimony at trial, Syverud submitted several expert reports on the educational benefits of diversity. Syverud's testimony indicated that when a critical mass of underrepresented minority students is present, ***320** racial stereotypes lose their force because nonminority students learn there is no " 'minority viewpoint' " but rather a variety of viewpoints among minority students. *Id.*, at 215a.

In an attempt to quantify the extent to which the Law School actually considers race in making admissions decisions, the parties introduced voluminous evidence at trial. Relying on data obtained from the Law School, petitioner's expert, Dr. Kinley Larntz, generated and analyzed "admissions grids" for the years in question (1995-2000). These grids show the number of applicants and the number of admittees for all combinations of GPAs and LSAT scores. Dr. Larntz made " 'cell-by-cell' " comparisons between applicants of different races to determine whether a statistically significant relationship existed between race and admission rates. He concluded that membership in certain minority groups " 'is an extremely strong factor in the decision for acceptance,' " and that applicants from these minority groups " 'are given an extremely large allowance for admission' " as compared to applicants who are members of nonfavored groups. *Id.*, at 218a-220a. Dr. Larntz conceded, however, that race is not the predominant factor in the Law School's admissions calculus. 12 Tr. 11-13 (Feb. 10, 2001).

Dr. Stephen Raudenbush, the Law School's expert, focused on the predicted effect of eliminating race as a factor in the Law School's admission process. In Dr. Raudenbush's view, a race-blind admissions system would have a " 'very dramatic,' " negative effect on underrepresented minority admissions. App. to Pet. for Cert. 223a. He testified that in 2000, 35 percent of underrepresented minority applicants were admitted. *Ibid.* Dr. Raudenbush predicted that if race were not considered, only 10 percent of those applicants would have been admitted. *Ibid.* Under this scenario, underrepresented minority students would have constituted 4 percent of the entering class in 2000 instead of the actual figure of 14.5 percent. *Ibid.*

****2335 *321** In the end, the District Court concluded that the Law School's use of race as a factor in admissions decisions was unlawful. Applying strict scrutiny, the District Court determined that the Law School's asserted interest in assembling a diverse student body was not compelling because "the attainment of a racially diverse class ... was not recognized as such by *Bakke* and it is not a remedy for past discrimination." *Id.*, at 246a. The District Court went on to hold that even if diversity were compelling, the Law School had not narrowly tailored its use of race to further that interest. The District Court granted petitioner's request for declaratory relief and enjoined the Law School from using race as a factor in its admissions decisions. The Court of Appeals entered a stay of the injunction pending appeal.

Sitting en banc, the Court of Appeals reversed the District Court's judgment and vacated the injunction. The Court of Appeals first held that Justice Powell's opinion in *Bakke* was binding precedent establishing diversity as a compelling state interest. According to the Court of Appeals, Justice Powell's opinion with respect to diversity constituted the controlling rationale for the judgment of this Court under the analysis set forth

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in *Marks v. United States,* 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977). The Court of Appeals also held that the Law School's use of race was narrowly tailored because race was merely a "potential 'plus' factor" and because the Law School's program was "virtually identical" to the Harvard admissions program described approvingly by Justice Powell and appended to his *Bakke* opinion. 288 F.3d 732, 746, 749 (C.A.6 2002).

Four dissenting judges would have held the Law School's use of race unconstitutional. Three of the dissenters, rejecting the majority's *Marks* analysis, examined the Law School's interest in student body diversity on the merits and concluded it was not compelling. The fourth dissenter, writing separately, found it unnecessary to decide whether diversity was a compelling interest because, like the other dissenters, ***322** he believed that the Law School's use of race was not narrowly tailored to further that interest.

We granted certiorari, 537 U.S. 1043, 123 S.Ct. 617, 154 L.Ed.2d 514 (2002), to resolve the disagreement among the Courts of Appeals on a question of national importance: Whether diversity is a compelling interest that can justify the narrowly tailored use of race in selecting applicants for admission to public universities. Compare *Hopwood v. Texas,* 78 F.3d 932 (C.A.5 1996) *(Hopwood I)* (holding that diversity is not a compelling state interest), with *Smith v. University of Wash. Law School,* 233 F.3d 1188 (C.A.9 2000) (holding that it is).

II

A

We last addressed the use of race in public higher education over 25 years ago. In the landmark *Bakke* case, we reviewed a racial set-aside program that reserved 16 out of 100 seats in a medical school class for members of certain minority groups. 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). The decision produced six separate opinions, none of which commanded a majority of the Court. Four Justices would have upheld the program against all attack on the ground that the government can use race to "remedy disadvantages cast on minorities by past racial prejudice." *Id.,* at 325, 98 S.Ct. 2733 (joint opinion of Brennan, White, Marshall, and Blackmun, JJ., concurring in judgment in part and dissenting in part). Four other Justices avoided the constitutional question altogether and struck down the program on statutory grounds. *Id.,* at 408, 98 S.Ct. 2733 (opinion of STEVENS, J., joined by Burger, C. J., and Stewart and REHNQUIST, JJ., concurring in judgment in part and dissenting in part). Justice Powell provided a fifth vote not only for invalidating the set-aside program, but ****2336** also for reversing the state court's injunction against any use of race whatsoever. The only holding for the Court in *Bakke* was that a "State has a substantial interest that legitimately may be served by a properly devised admissions program involving ***323** the competitive consideration of race and ethnic origin." *Id.,* at 320, 98 S.Ct. 2733. Thus, we reversed that part of the lower court's judgment that enjoined the university "from any consideration of the race of any applicant." *Ibid.*

Since this Court's splintered decision in *Bakke,* Justice Powell's opinion announcing the judgment of the Court has served as the touchstone for constitutional analysis of race-conscious admissions policies. Public and private universities across the Nation have modeled their own admissions programs on Justice Powell's views on permissible race-conscious policies. See, *e.g.,* Brief for Judith Areen et al. as *Amici Curiae* 12-13 (law school admissions programs employ "methods designed from and based on Justice Powell's opinion in *Bakke* "); Brief for Amherst College et al. as *Amici Curiae* 27 ("After *Bakke,* each of the *amici* (and undoubtedly other selective colleges and universities as well) reviewed their admissions procedures in light of Justice Powell's opinion ... and set sail accordingly"). We therefore discuss Justice Powell's opinion in some detail.

Justice Powell began by stating that "[t]he guarantee of equal protection cannot mean one

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thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." *Bakke,* 438 U.S., at 289-290, 98 S.Ct. 2733. In Justice Powell's view, when governmental decisions "touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest." *Id.,* at 299, 98 S.Ct. 2733. Under this exacting standard, only one of the interests asserted by the university survived Justice Powell's scrutiny.

First, Justice Powell rejected an interest in " 'reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession' " as an unlawful interest in racial balancing. *Id.,* at 306-307, 98 S.Ct. 2733. Second, Justice Powell rejected an interest in remedying societal discrimination ***324** because such measures would risk placing unnecessary burdens on innocent third parties "who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered." *Id.,* at 310, 98 S.Ct. 2733. Third, Justice Powell rejected an interest in "increasing the number of physicians who will practice in communities currently underserved," concluding that even if such an interest could be compelling in some circumstances the program under review was not "geared to promote that goal." *Id.,* at 306, 310, 98 S.Ct. 2733.

Justice Powell approved the university's use of race to further only one interest: "the attainment of a diverse student body." *Id.,* at 311, 98 S.Ct. 2733. With the important proviso that "constitutional limitations protecting individual rights may not be disregarded," Justice Powell grounded his analysis in the academic freedom that "long has been viewed as a special concern of the First Amendment." *Id.,* at 312, 314, 98 S.Ct. 2733. Justice Powell emphasized that nothing less than the " 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Id.,* at 313, 98 S.Ct. 2733 (quoting *Keyishian v. Board of Regents of Univ. of State of N. Y.,* 385 U.S. 589, 603, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967)). In seeking the "right to select those students who will contribute the most to the 'robust exchange of ideas,' " a university seeks "to achieve a goal that is of paramount importance in the fulfillment of its mission." 438 U.S., at 313, 98 S.Ct. 2733. Both "tradition and experience lend support to ****2337** the view that the contribution of diversity is substantial." *Ibid.*

Justice Powell was, however, careful to emphasize that in his view race "is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body." *Id.,* at 314, 98 S.Ct. 2733. For Justice Powell, "[i]t is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups," that ***325** can justify the use of race. *Id.,* at 315, 98 S.Ct. 2733. Rather, "[t]he diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." *Ibid.*

In the wake of our fractured decision in *Bakke,* courts have struggled to discern whether Justice Powell's diversity rationale, set forth in part of the opinion joined by no other Justice, is nonetheless binding precedent under *Marks.* In that case, we explained that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." 430 U.S., at 193, 97 S.Ct. 990 (internal quotation marks and citation omitted). As the divergent opinions of the lower courts demonstrate, however, "[t]his test is more easily stated than applied to the various opinions supporting the result in *[Bakke].*" *Nichols v. United States,* 511 U.S. 738, 745-746, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994). Compare, *e.g., Johnson v.*

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Board of Regents of Univ. of Ga., 263 F.3d 1234 (C.A.11 2001) (Justice Powell's diversity rationale was not the holding of the Court); *Hopwood v. Texas,* 236 F.3d 256, 274-275 (C.A.5 2000) *(Hopwood II)* (same); *Hopwood I,* 78 F.3d 932 (C.A.5 1996) (same), with *Smith v. University of Wash. Law School,* 233 F.3d, at 1199 (Justice Powell's opinion, including the diversity rationale, is controlling under *Marks*).

We do not find it necessary to decide whether Justice Powell's opinion is binding under *Marks.* It does not seem "useful to pursue the *Marks* inquiry to the utmost logical possibility when it has so obviously baffled and divided the lower courts that have considered it." *Nichols v. United States, supra,* at 745-746, 114 S.Ct. 1921. More important, for the reasons set out below, today we endorse Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions.

***326 B**

The Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amdt. 14, § 2. Because the Fourteenth Amendment "protect[s] *persons,* not *groups,*" all "governmental action based on race--a *group* classification long recognized as in most circumstances irrelevant and therefore prohibited--should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed." *Adarand Constructors, Inc. v. Peña,* 515 U.S. 200, 227, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995) (emphasis in original; internal quotation marks and citation omitted). We are a "free people whose institutions are founded upon the doctrine of equality." *Loving v. Virginia,* 388 U.S. 1, 11, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967) (internal quotation marks and citation omitted). It follows from that principle that "government may treat people differently because of their race only for the most compelling reasons." *Adarand Constructors, Inc. v. Peña,* 515 U.S., at 227, 115 S.Ct. 2097.

[1] We have held that all racial classifications imposed by government "must be analyzed by a reviewing court under strict scrutiny." *Ibid.* This means that such classifications are constitutional only if they are narrowly tailored to further compelling ****2338** governmental interests. "Absent searching judicial inquiry into the justification for such race-based measures," we have no way to determine what "classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Richmond v. J.A. Croson Co.,* 488 U.S. 469, 493, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality opinion). We apply strict scrutiny to all racial classifications to " 'smoke out' illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant use of a highly suspect tool." *Ibid.*

[2][3] Strict scrutiny is not "strict in theory, but fatal in fact." *Adarand Constructors, Inc. v. Peña, supra,* at 237, 115 S.Ct. 2097 (internal quotation marks and citation omitted). Although all governmental ***327** uses of race are subject to strict scrutiny, not all are invalidated by it. As we have explained, "whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." 515 U.S., at 229-230, 115 S.Ct. 2097. But that observation "says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny." *Id.,* at 230, 115 S.Ct. 2097. When race-based action is necessary to further a compelling governmental interest, such action does not violate the constitutional guarantee of equal protection so long as the narrow-tailoring requirement is also satisfied.

[4] Context matters when reviewing race-based governmental action under the Equal Protection Clause. See *Gomillion v. Lightfoot,* 364 U.S. 339, 343-344, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960) (admonishing that, "in dealing with claims under broad provisions of the Constitution, which derive

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content by an interpretive process of inclusion and exclusion, it is imperative that generalizations, based on and qualified by the concrete situations that gave rise to them, must not be applied out of context in disregard of variant controlling facts"). In *Adarand Constructors, Inc. v. Peña,* we made clear that strict scrutiny must take " 'relevant differences' into account." 515 U.S., at 228, 115 S.Ct. 2097. Indeed, as we explained, that is its "fundamental purpose." *Ibid.* Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.

III

A

With these principles in mind, we turn to the question whether the Law School's use of race is justified by a compelling state interest. Before this Court, as they have ***328** throughout this litigation, respondents assert only one justification for their use of race in the admissions process: obtaining "the educational benefits that flow from a diverse student body." Brief for Respondent Bollinger et al. i. In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity.

[5] We first wish to dispel the notion that the Law School's argument has been foreclosed, either expressly or implicitly, by our affirmative-action cases decided since *Bakke.* It is true that some language in those opinions might be read to suggest that remedying past discrimination is the only permissible justification for race-based governmental action. See, *e.g., Richmond v. J.A. Croson Co., supra,* at 493, 109 S.Ct. 706 (plurality opinion) (stating that unless classifications based on race are "strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of ****2339** racial hostility"). But we have never held that the only governmental use of race that can survive strict scrutiny is remedying past discrimination. Nor, since *Bakke,* have we directly addressed the use of race in the context of public higher education. Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School's assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their *amici.* Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university. Our holding today is in keeping with our tradition of giving a degree of deference to a university's academic decisions, within constitutionally prescribed limits. See *Regents of Univ. of Mich. v. Ewing,* 474 U.S. 214, 225, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985); ***329***Board of Curators of Univ. of Mo. v. Horowitz,* 435 U.S. 78, 96, n. 6, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978); *Bakke,* 438 U.S., at 319, n. 53, 98 S.Ct. 2733 (opinion of Powell, J.).

We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition. See, *e.g., Wieman v. Updegraff,* 344 U.S. 183, 195, 73 S.Ct. 215, 97 L.Ed. 216 (1952) (Frankfurter, J., concurring); *Sweezy v. New Hampshire,* 354 U.S. 234, 250, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957); *Shelton v. Tucker,* 364 U.S. 479, 487, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); *Keyishian v. Board of Regents of Univ. of State of N. Y.,* 385 U.S., at 603, 87 S.Ct. 675. In announcing the principle of student body diversity as a compelling state interest, Justice Powell invoked our cases recognizing a constitutional dimension, grounded in the First Amendment, of educational autonomy: "The freedom of a university to make its own judgments as to education includes the selection of its student body." *Bakke, supra,* at 312, 98 S.Ct. 2733. From

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this premise, Justice Powell reasoned that by claiming "the right to select those students who will contribute the most to the 'robust exchange of ideas,' " a university "seek[s] to achieve a goal that is of paramount importance in the fulfillment of its mission." 438 U.S., at 313, 98 S.Ct. 2733 (quoting *Keyishian v. Board of Regents of Univ. of State of N. Y., supra,* at 603, 87 S.Ct. 675). Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School's proper institutional mission, and that "good faith" on the part of a university is "presumed" absent "a showing to the contrary." 438 U.S., at 318-319, 98 S.Ct. 2733.

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a 'critical mass' of minority students." Brief for Respondent Bollinger et al. 13. The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." ***330***Bakke,* 438 U.S., at 307, 98 S.Ct. 2733 (opinion of Powell, J.). That would amount to outright racial balancing, which is patently unconstitutional. *Ibid.; Freeman v. Pitts,* 503 U.S. 467, 494, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992) ("Racial balance is not to be achieved for its own sake"); *Richmond v. J.A. Croson Co.,* 488 U.S., at 507, 109 S.Ct. 706. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.

These benefits are substantial. As the District Court emphasized, the Law School's admissions policy promotes "cross-racial understanding," helps to ****2340** break down racial stereotypes, and "enables [students] to better understand persons of different races." App. to Pet. for Cert. 246a. These benefits are "important and laudable," because "classroom discussion is livelier, more spirited, and simply more enlightening and interesting" when the students have "the greatest possible variety of backgrounds." *Id.,* at 246a, 244a.

The Law School's claim of a compelling interest is further bolstered by its *amici,* who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." Brief for American Educational Research Association et al. as *Amici Curiae* 3; see, *e.g.,* W. Bowen & D. Bok, The Shape of the River (1998); Diversity Challenged: Evidence on the Impact of Affirmative Action (G. Orfield & M. Kurlaender eds.2001); Compelling Interest: Examining the Evidence on Racial Dynamics in Colleges and Universities (M. Chang, D. Witt, J. Jones, & K. Hakuta eds.2003).

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. Brief for 3M et al. as *Amici Curiae* ***331** 5; Brief for General Motors Corp. as *Amicus Curiae* 3-4. What is more, high-ranking retired officers and civilian leaders of the United States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps ... is essential to the military's ability to fulfill its principle mission to provide national security." Brief for Julius W. Becton, Jr., et al. as *Amici Curiae* 5. The primary sources for the Nation's officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. *Ibid.* At present, "the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies." *Ibid.* (emphasis in original). To fulfill its mission, the military "must be selective in admissions for training and education for the

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officer corps, *and* it must train and educate a highly qualified, racially diverse officer corps in a racially diverse educational setting." *Id.*, at 29 (emphasis in original). We agree that "[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." *Ibid.*

We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to "sustaining our political and cultural heritage" with a fundamental role in maintaining the fabric of society. *Plyler v. Doe,* 457 U.S. 202, 221, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). This Court has long recognized that "education ... is the very foundation of good citizenship." *Brown v. Board of Education,* 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954). For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity. The United States, as *amicus curiae,* affirms that "[e]nsuring that public institutions are open and available to all segments of American ***332** society, including people of all races and ethnicities, represents a paramount government objective." Brief for United States as *Amicus Curiae* 13. And, "[n]owhere is the importance of such openness more acute than in the context of higher education." *Ibid.* Effective participation by members of all racial and ethnic groups in the civic life of our Nation is ****2341** essential if the dream of one Nation, indivisible, is to be realized.

Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. *Sweatt v. Painter,* 339 U.S. 629, 634, 70 S.Ct. 848, 94 L.Ed. 1114 (1950) (describing law school as a "proving ground for legal learning and practice"). Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. See Brief for Association of American Law Schools as *Amicus Curiae* 5-6. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges. *Id.*, at 6.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts." See *Sweatt v. Painter, supra,* at 634, 70 S.Ct. 848. Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society ***333** may participate in the educational institutions that provide the training and education necessary to succeed in America.

The Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." Brief for Respondent Bollinger et al. 30. To the contrary, diminishing the force of such stereotypes is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters. The Law School has determined, based on its experience and expertise, that a "critical mass" of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body.

539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304, 71 USLW 4498, 91 Fair Empl.Prac.Cas. (BNA) 1761, 84 Empl. Prac. Dec. P 41,415, 177 Ed. Law Rep. 801, 03 Cal. Daily Op. Serv. 5378, 2003 Daily Journal D.A.R. 6800, 16 Fla. L. Weekly Fed. S 367

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B

[6][7] Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still "constrained in how it may pursue that end: [T]he means chosen to accomplish the [government's] asserted purpose must be specifically and narrowly framed to accomplish that purpose." *Shaw v. Hunt,* 517 U.S. 899, 908, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996) (internal quotation marks and citation omitted). The purpose of the narrow tailoring requirement is to ensure that "the means chosen 'fit' th[e] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." *Richmond v. J.A. Croson Co.,* 488 U.S., at 493, 109 S.Ct. 706 (plurality opinion).

Since *Bakke,* we have had no occasion to define the contours of the narrow-tailoring inquiry with respect to race-conscious university admissions programs. That inquiry ***334** must be calibrated to fit the distinct issues raised by the use of race to achieve student body diversity in public higher education. Contrary to Justice KENNEDY's assertions, we do not "abando[n] strict scrutiny," see *post,* at 2374 (dissenting opinion). Rather, as we have already ****2342** explained, *supra,* at 2338, we adhere to *Adarand's* teaching that the very purpose of strict scrutiny is to take such "relevant differences into account." 515 U.S., at 228, 115 S.Ct. 2097 (internal quotation marks omitted).

[8] To be narrowly tailored, a race-conscious admissions program cannot use a quota system--it cannot "insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants." *Bakke,* 438 U.S., at 315, 98 S.Ct. 2733 (opinion of Powell, J.). Instead, a university may consider race or ethnicity only as a " 'plus' in a particular applicant's file," without "insulat[ing] the individual from comparison with all other candidates for the available seats." *Id.,* at 317, 98 S.Ct. 2733. In other words, an admissions program must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight." *Ibid.*

[9] We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. As Justice Powell made clear in *Bakke,* truly individualized consideration demands that race be used in a flexible, nonmechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups or put members of those groups on separate admissions tracks. See *id.,* at 315-316, 98 S.Ct. 2733. Nor can universities insulate applicants who belong to certain racial or ethnic groups from the competition for admission. *Ibid.* Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant. *Ibid.*

[10] ***335** We are satisfied that the Law School's admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota. Properly understood, a "quota" is a program in which a certain fixed number or proportion of opportunities are "reserved exclusively for certain minority groups." *Richmond v. J.A. Croson Co., supra,* at 496, 109 S.Ct. 706 (plurality opinion). Quotas " 'impose a fixed number or percentage which must be attained, or which cannot be exceeded,' " *Sheet Metal Workers v. EEOC,* 478 U.S. 421, 495, 106 S.Ct. 3019, 92 L.Ed.2d 344 (1986) (O'CONNOR, J., concurring in part and dissenting in part), and "insulate the individual from comparison with all other candidates for the available seats," *Bakke, supra,* at 317, 98 S.Ct. 2733 (opinion of Powell, J.). In contrast, "a permissible goal ... require[s] only a good-faith effort ... to come within a range demarcated by the goal itself," *Sheet Metal Workers v. EEOC, supra,* at 495, 106 S.Ct. 3019, and permits consideration of race as a "plus" factor in any given case while still ensuring that each candidate "compete[s] with all other qualified applicants," *Johnson v. Transportation Agency, Santa Clara Cty.,* 480 U.S. 616, 638, 107 S.Ct.

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1442, 94 L.Ed.2d 615 (1987).

Justice Powell's distinction between the medical school's rigid 16-seat quota and Harvard's flexible use of race as a "plus" factor is instructive. Harvard certainly had minimum *goals* for minority enrollment, even if it had no specific number firmly in mind. See *Bakke, supra,* at 323, 98 S.Ct. 2733 (opinion of Powell, J.) ("10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States"). What is more, Justice Powell flatly rejected the argument that Harvard's program was "the functional equivalent of a quota" merely because it had some " 'plus' " for race, or gave greater "weight" to race than to some other factors, in order to achieve student body diversity. 438 U.S., at 317-318, 98 S.Ct. 2733.

****2343** The Law School's goal of attaining a critical mass of underrepresented minority students does not transform its program ***336** into a quota. As the Harvard plan described by Justice Powell recognized, there is of course "some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted." *Id.,* at 323, 98 S.Ct. 2733. "[S]ome attention to numbers," without more, does not transform a flexible admissions system into a rigid quota. *Ibid.* Nor, as Justice KENNEDY posits, does the Law School's consultation of the "daily reports," which keep track of the racial and ethnic composition of the class (as well as of residency and gender), "sugges[t] there was no further attempt at individual review save for race itself" during the final stages of the admissions process. See *post,* at 2372 (dissenting opinion). To the contrary, the Law School's admissions officers testified without contradiction that they never gave race any more or less weight based on the information contained in these reports. Brief for Respondents Bollinger et al. 43, n. 70 (citing App. in Nos. 01-1447 and 01-1516(CA6), p. 7336). Moreover, as Justice KENNEDY concedes, see *post,* at 2372, between 1993 and 1998, the number of African-American, Latino, and Native-American students in each class at the Law School varied from 13.5 to 20.1 percent, a range inconsistent with a quota.

THE CHIEF JUSTICE believes that the Law School's policy conceals an attempt to achieve racial balancing, and cites admissions data to contend that the Law School discriminates among different groups within the critical mass. *Post,* at 2366-2369 (dissenting opinion). But, as THE CHIEF JUSTICE concedes, the number of underrepresented minority students who ultimately enroll in the Law School differs substantially from their representation in the applicant pool and varies considerably for each group from year to year. See *post,* at 2369 (dissenting opinion).

[11] That a race-conscious admissions program does not operate as a quota does not, by itself, satisfy the requirement of individualized consideration. When using race as a "plus" ***337** factor in university admissions, a university's admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application. The importance of this individualized consideration in the context of a race-conscious admissions program is paramount. See *Bakke,* 438 U.S., at 318, n. 52, 98 S.Ct. 2733 (opinion of Powell, J.) (identifying the "denial ... of th[e] right to individualized consideration" as the "principal evil" of the medical school's admissions program).

Here, the Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. The Law School affords this individualized consideration to applicants of all races. There is no policy, either *de jure* or *de facto,* of automatic acceptance or rejection based on any single "soft" variable. Unlike the program at issue

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in *Gratz v. Bollinger, post,* 539 U.S. 244, 123 S.Ct. 2411, the Law School awards no mechanical, predetermined diversity "bonuses" based on race or ethnicity. See *post,* 539 U.S., at 271-272, 123 S.Ct. 2411, 2003 WL 21434002 (distinguishing a race-conscious admissions program that automatically awards 20 points based on race from the Harvard plan, which considered race but "did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity"). Like the Harvard plan, the Law School's admissions policy "is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, ****2344** although not necessarily according them the same weight." *Bakke, supra,* at 317, 98 S.Ct. 2733 (opinion of Powell, J.).

We also find that, like the Harvard plan Justice Powell referenced in *Bakke,* the Law School's race-conscious admissions program adequately ensures that all factors that may contribute to student body diversity are meaningfully considered alongside race in admissions decisions. With respect ***338** to the use of race itself, all underrepresented minority students admitted by the Law School have been deemed qualified. By virtue of our Nation's struggle with racial inequality, such students are both likely to have experiences of particular importance to the Law School's mission, and less likely to be admitted in meaningful numbers on criteria that ignore those experiences. See App. 120.

The Law School does not, however, limit in any way the broad range of qualities and experiences that may be considered valuable contributions to student body diversity. To the contrary, the 1992 policy makes clear "[t]here are many possible bases for diversity admissions," and provides examples of admittees who have lived or traveled widely abroad, are fluent in several languages, have overcome personal adversity and family hardship, have exceptional records of extensive community service, and have had successful careers in other fields. *Id.,* at 118-119. The Law School seriously considers each "applicant's promise of making a notable contribution to the class by way of a particular strength, attainment, or characteristic--*e.g.,* an unusual intellectual achievement, employment experience, nonacademic performance, or personal background." *Id.,* at 83-84. All applicants have the opportunity to highlight their own potential diversity contributions through the submission of a personal statement, letters of recommendation, and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School.

What is more, the Law School actually gives substantial weight to diversity factors besides race. The Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected. See Brief for Respondent Bollinger et al. 10; App. 121-122. This shows that the Law School seriously weighs many other diversity factors besides race that can make a real and dispositive difference for nonminority applicants as well. By this ***339** flexible approach, the Law School sufficiently takes into account, in practice as well as in theory, a wide variety of characteristics besides race and ethnicity that contribute to a diverse student body. Justice KENNEDY speculates that "race is likely outcome determinative for many members of minority groups" who do not fall within the upper range of LSAT scores and grades. *Post,* at 2371 (dissenting opinion). But the same could be said of the Harvard plan discussed approvingly by Justice Powell in *Bakke,* and indeed of any plan that uses race as one of many factors. See 438 U.S., at 316, 98 S.Ct. 2733 (" 'When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor' ").

[12] Petitioner and the United States argue that the

539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304, 71 USLW 4498, 91 Fair Empl.Prac.Cas. (BNA) 1761, 84 Empl. Prac. Dec. P 41,415, 177 Ed. Law Rep. 801, 03 Cal. Daily Op. Serv. 5378, 2003 Daily Journal D.A.R. 6800, 16 Fla. L. Weekly Fed. S 367

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Law School's plan is not narrowly tailored because race-neutral means exist to obtain the educational benefits of student body diversity that the Law School seeks. We disagree. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups. See *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 280, n. 6, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986) (alternatives must serve the interest " 'about as well' "); ****2345***Richmond v. J.A. Croson Co.*, 488 U.S., at 509-510, 109 S.Ct. 706 (plurality opinion) (city had a "whole array of race-neutral" alternatives because changing requirements "would have [had] little detrimental effect on the city's interests"). Narrow tailoring does, however, require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks. See *id.*, at 507, 109 S.Ct. 706 (set-aside plan not narrowly tailored where "there does not appear to have been any consideration of the use of race-neutral means"); *Wygant v. Jackson Bd. of Ed., supra,* at 280, n. 6, 106 S.Ct. 1842 (narrow tailoring ***340** "require[s] consideration" of "lawful alternative and less restrictive means").

We agree with the Court of Appeals that the Law School sufficiently considered workable race-neutral alternatives. The District Court took the Law School to task for failing to consider race-neutral alternatives such as "using a lottery system" or "decreasing the emphasis for all applicants on undergraduate GPA and LSAT scores." App. to Pet. for Cert. 251a. But these alternatives would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both.

The Law School's current admissions program considers race as one factor among many, in an effort to assemble a student body that is diverse in ways broader than race. Because a lottery would make that kind of nuanced judgment impossible, it would effectively sacrifice all other educational values, not to mention every other kind of diversity. So too with the suggestion that the Law School simply lower admissions standards for all students, a drastic remedy that would require the Law School to become a much different institution and sacrifice a vital component of its educational mission. The United States advocates "percentage plans," recently adopted by public undergraduate institutions in Texas, Florida, and California, to guarantee admission to all students above a certain class-rank threshold in every high school in the State. Brief for United States as *Amicus Curiae* 14-18. The United States does not, however, explain how such plans could work for graduate and professional schools. Moreover, even assuming such plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university. We are satisfied that the Law School adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing the Law School to abandon the academic selectivity that is the cornerstone of its educational mission.

[13][14] ***341** We acknowledge that "there are serious problems of justice connected with the idea of preference itself." *Bakke,* 438 U.S., at 298, 98 S.Ct. 2733 (opinion of Powell, J.). Narrow tailoring, therefore, requires that a race-conscious admissions program not unduly harm members of any racial group. Even remedial race-based governmental action generally "remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit." *Id.*, at 308, 98 S.Ct. 2733. To be narrowly tailored, a race-conscious admissions program must not "unduly burden individuals who are not members of the favored racial and ethnic groups." *Metro Broadcasting, Inc. v. FCC,* 497 U.S. 547, 630, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990) (O'CONNOR, J., dissenting).

We are satisfied that the Law School's admissions

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program does not. Because the Law School considers "all pertinent elements of diversity," it can (and does) select nonminority applicants who have greater potential to enhance student body diversity over underrepresented minority applicants. See *Bakke, supra,* at 317, 98 S.Ct. 2733 (opinion of Powell, J.). As Justice Powell recognized in *Bakke,* so long as a race-conscious admissions program uses race as a "plus" factor in the context of ****2346** individualized consideration, a rejected applicant

> "will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname.... His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment." 438 U.S., at 318, 98 S.Ct. 2733.

We agree that, in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race-conscious admissions program does not unduly harm nonminority applicants.

[15] We are mindful, however, that "[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race." ***342***Palmore v. Sidoti, 466 U.S. 429, 432, 104 S.Ct. 1879, 80 L.Ed.2d 421 (1984). Accordingly, race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle. We see no reason to exempt race-conscious admissions programs from the requirement that all governmental use of race must have a logical end point. The Law School, too, concedes that all "race-conscious programs must have reasonable durational limits." Brief for Respondent Bollinger et al. 32.*

In the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity. Universities in California, Florida, and Washington State, where racial preferences in admissions are prohibited by state law, are currently engaged in experimenting with a wide variety of alternative approaches. Universities in other States can and should draw on the most promising aspects of these race-neutral alternatives as they develop. Cf. *United States v. Lopez,* 514 U.S. 549, 581, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) (KENNEDY, J., concurring) ("[T]he States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear").

The requirement that all race-conscious admissions programs have a termination point "assure[s] all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself." *Richmond v. J.A. Croson Co.,* 488 U.S., at 510, 109 S.Ct. 706 (plurality opinion); see also Nathanson & Bartnik, The Constitutionality of Preferential Treatment for Minority Applicants to Professional Schools, ***343** 58 Chicago Bar Rec. 282, 293 (May-June 1977) ("It would be a sad day indeed, were America to become a quota-ridden society, with each identifiable minority assigned proportional representation in every desirable walk of life. But that is not the rationale for programs of preferential treatment; the acid test of their justification will be their efficacy in eliminating the need for any racial or ethnic preferences at all").

We take the Law School at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable. See Brief for Respondent Bollinger et al. 34; *Bakke, supra,* at 317-318, 98 S.Ct. 2733 (opinion of Powell, J.) (presuming good faith of

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university officials in the absence of a showing to the contrary). It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. ****2347** See Tr. of Oral Arg. 43. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

IV

In summary, the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. Consequently, petitioner's statutory claims based on Title VI and 42 U.S.C. § 1981 also fail. See *Bakke, supra,* at 287, 98 S.Ct. 2733 (opinion of Powell, J.) ("Title VI ... proscribe[s] only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment"); *General Building Contractors Assn., Inc. v. Pennsylvania,* 458 U.S. 375, 389-391, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982) (the prohibition against discrimination in § 1981 is co-extensive with the Equal Protection Clause). The judgment ***344** of the Court of Appeals for the Sixth Circuit, accordingly, is affirmed.

It is so ordered.

Justice GINSBURG, with whom Justice BREYER joins, concurring.

The Court's observation that race-conscious programs "must have a logical end point," *ante,* at 2346, accords with the international understanding of the office of affirmative action. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994, see State Dept., Treaties in Force 422-423 (June 1996), endorses "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." Annex to G.A. Res. 2106, 20 U.N. GAOR, 20th Sess., Res. Supp. (No. 14), p. 47, U.N. Doc. A/6014, Art. 2(2) (1965). But such measures, the Convention instructs, "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." *Ibid.;* see also Art. 1(4) (similarly providing for temporally limited affirmative action); Convention on the Elimination of All Forms of Discrimination against Women, Annex to G.A. Res. 34/180, 34 U.N. GAOR, 34th Sess., Res. Supp. (No. 46), p. 194, U.N. Doc. A/34/46, Art. 4(1) (1979) (authorizing "temporary special measures aimed at accelerating *de facto* equality" that "shall be discontinued when the objectives of equality of opportunity and treatment have been achieved").

The Court further observes that "[i]t has been 25 years since Justice Powell [in *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978)] first approved the use of race to further an interest in student body diversity in the context of public higher education." *Ante,* at 2346. For at least part of that ***345** time, however, the law could not fairly be described as "settled," and in some regions of the Nation, overtly race-conscious admissions policies have been proscribed. See *Hopwood v. Texas,* 78 F.3d 932 (C.A.5 1996); cf. *Wessmann v. Gittens,* 160 F.3d 790 (C.A.1 1998); *Tuttle v. Arlington Cty. School Bd.,* 195 F.3d 698 (C.A.4 1999); *Johnson v. Board of Regents of Univ. of Ga.,* 263 F.3d 1234 (C.A.11 2001). Moreover, it was only 25 years before *Bakke* that this Court declared public school segregation unconstitutional, a declaration that, after prolonged resistance, yielded an end to a law-enforced racial caste system, itself the legacy of centuries of slavery. See *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); cf. *Cooper v. Aaron,* 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958).

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Briefs and Other Related Documents

Supreme Court of the United States
Jennifer GRATZ and Patrick Hamacher, Petitioners,
v.
Lee BOLLINGER et al.
No. 02-516.

Argued April 1, 2003.
Decided June 23, 2003.

Rejected Caucasian in-state applicants for admission to University of Michigan's College of Literature, Science and the Arts (LSA) filed class action complaint against, inter alia, board of regents alleging that university's use of racial preferences in undergraduate admissions violated Equal Protection Clause, Title VI, and § 1981 and seeking, inter alia, compensatory and punitive damages for past violations, declaratory and injunctive relief, and order requiring LSA to offer one of them admission as transfer student. Action was certified as class action and bifurcated into damages and liability phases. On cross-motions for summary judgment with respect to liability phase only, the United States District Court for the Eastern District of Michigan, 122 F.Supp.2d 811, Patrick J. Duggan, J., granted petitioners' motion with respect to admissions programs in existence from 1995 through 1998, but denied motion with respect to admissions programs for 1999 and 2000. During pendency of interlocutory appeal to the United States Court of Appeals for the Sixth Circuit, certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that: (1) petitioners had standing to seek declaratory and injunctive relief; (2) university's current freshman admissions policy violated Equal Protection Clause because its use of race was not narrowly tailored to achieve respondents' asserted compelling state interest in diversity; and (3) Title VI and § 1981 were also violated by that policy.

Reversed in part and remanded.

Justice O'Connor filed concurring opinion in which Justice Breyer joined in part.

Justice Thomas filed concurring opinion.

Justice Breyer filed opinion concurring in the judgment.

Justice Souter filed dissenting opinion in which Justice Ginsburg joined in part.

Justice Ginsburg filed dissenting opinion in which Justice Souter joined and Justice Breyer joined in part.

West Headnotes

[1] Constitutional Law ⇐42.2(2)
92k42.2(2) Most Cited Cases
Intent may be relevant to standing in Equal Protection challenge. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14.

[2] Constitutional Law ⇐42.2(2)
92k42.2(2) Most Cited Cases
The injury in fact necessary to establish standing in case involving an Equal Protection challenge is denial of equal treatment resulting from imposition of barrier, not ultimate inability to obtain benefit; in face of such barrier, to establish standing party need only demonstrate that it is ready and able to perform and that discriminatory policy prevents it from doing so on equal basis. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14.

539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257, 71 USLW 4480, 91 Fair Empl.Prac.Cas. (BNA) 1803, 84 Empl. Prac. Dec. P 41,416, 177 Ed. Law Rep. 851, 03 Cal. Daily Op. Serv. 5362, 2003 Daily Journal D.A.R. 6783, 16 Fla. L. Weekly Fed. S 387

(Cite as: 539 U.S. 244, 123 S.Ct. 2411)

[3] Constitutional Law ⇐42.2(2)
92k42.2(2) Most Cited Cases
Caucasian applicant for admission to University of Michigan College of Literature, Science and the Arts (LSA) had standing to seek prospective relief with respect to Equal Protection challenge to University's continued use of race in undergraduate admissions, regardless of whether he actually applied for admission as transfer student; when he applied to University as freshman applicant, he was denied admission even though underrepresented minority applicant with his qualifications would have been admitted, and after being denied admission he demonstrated that he was "able and ready" to apply as transfer student should University cease to use race in undergraduate admissions. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14.

[4] Federal Civil Procedure ⇐187.5
170Ak187.5 Most Cited Cases
State university's use of race in undergraduate transfer admissions did not differ from its use of race in undergraduate freshman admissions, so fact that petitioner was transfer applicant did not bar his standing to represent absent class members challenging freshman admissions or make him inadequate representative of that class; guidelines used to evaluate transfer applicants specifically cross-referenced factors and qualifications considered in assessing freshman applicants, criteria used to determine whether transfer applicant would contribute to university's stated goal of diversity were identical to those used to evaluate freshman applicants, and sole difference that all underrepresented minority freshman applicants received 20 points and "virtually" all who were minimally qualified were admitted whereas "generally" all minimally qualified minority transfer applicants were admitted outright, though possibly relevant to narrow tailoring analysis, clearly had no effect on applicant's standing. U.S.C.A. Const. Art. 3, § 2, cl. 1; Fed.Rules Civ.Proc.Rule 23(a)(4), 28 U.S.C.A.

[5] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[5] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
State university's interest in achieving educational diversity could constitute compelling state interest capable of supporting narrowly tailored means, for purposes of determining whether that university's policy of using race in undergraduate admissions decisions violated Equal Protection Clause of Fourteenth Amendment. U.S.C.A. Const.Amend. 14
.

[6] Constitutional Law ⇐215
92k215 Most Cited Cases
All racial classifications reviewable under Equal Protection Clause must be strictly scrutinized, and this standard of review is not dependent on race of those burdened or benefited by a particular classification; thus, any person, of whatever race, has right to demand that any governmental actor subject to Constitution justify any racial classification subjecting that person to unequal treatment under strictest of judicial scrutiny. U.S.C.A. Const.Amend. 14.

[7] Colleges and Universities ⇐9.15
81k9.15 Most Cited Cases

[7] Constitutional Law ⇐220(3)
92k220(3) Most Cited Cases
Equal protection rights of Caucasian applicants to University of Michigan's undergraduate College of Literature, Science and the Arts (LSA) were violated by University's policy of automatically distributing 20 points, or one-fifth of those needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race; that policy was not narrowly tailored to asserted compelling state interest in achieving educational diversity. U.S.C.A. Const.Amend. 14.

[8] Civil Rights ⇐1055
78k1055 Most Cited Cases
(Formerly 78k126)

539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257, 71 USLW 4480, 91 Fair Empl.Prac.Cas. (BNA) 1803, 84 Empl. Prac. Dec. P 41,416, 177 Ed. Law Rep. 851, 03 Cal. Daily Op. Serv. 5362, 2003 Daily Journal D.A.R. 6783, 16 Fla. L. Weekly Fed. S 387

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Discrimination that violates Equal Protection Clause of Fourteenth Amendment committed by institution that accepts federal funds also constitutes violation of Title VI. U.S.C.A. Const.Amend. 14; Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[9] Civil Rights ⇐1041
78k1041 Most Cited Cases
(Formerly 78k118)

[9] Civil Rights ⇐1061
78k1061 Most Cited Cases
(Formerly 78k127.1)
Section 1981 was meant, by its broad terms, to proscribe discrimination in making or enforcement of contracts against, or in favor of, any race, and contract for educational services is "contract" for purposes of that statute. 42 U.S.C.A. § 1981.

[10] Civil Rights ⇐1033(1)
78k1033(1) Most Cited Cases
(Formerly 78k111)
Purposeful discrimination that violates Equal Protection Clause of Fourteenth Amendment will also violate § 1981. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1981.

[11] Civil Rights ⇐1061
78k1061 Most Cited Cases
(Formerly 78k127.1)
Because Equal Protection Clause was violated thereby, Title VI and § 1981 were also violated by state university's undergraduate admissions policy of automatically distributing 20 points, or one-fifth of those needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race. 42 U.S.C.A. § 1981; Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

****2413** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Petitioners Gratz and Hamacher, both of whom are Michigan residents and Caucasian, applied for admission to the University of Michigan's (University) College of Literature, Science, and the Arts (LSA) in 1995 and 1997, respectively. Although the LSA considered Gratz to be well qualified and Hamacher to be within the qualified range, both were denied early admission and were ultimately denied admission. In order to promote consistency in the ****2414** review of the many applications received, the University's Office of Undergraduate Admissions (OUA) uses written guidelines for each academic year. The guidelines have changed a number of times during the period relevant to this litigation. The OUA considers a number of factors in making admissions decisions, including high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race. During all relevant periods, the University has considered African-Americans, Hispanics, and Native Americans to be "underrepresented minorities," and it is undisputed that the University admits virtually every qualified applicant from these groups. The current guidelines use a selection method under which every applicant from an underrepresented racial or ethnic minority group is automatically awarded 20 points of the 100 needed to guarantee admission.

Petitioners filed this class action alleging that the University's use of racial preferences in undergraduate admissions violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981. They sought compensatory and punitive damages for past violations, declaratory relief finding that respondents violated their rights to nondiscriminatory treatment, an injunction prohibiting respondents from continuing to discriminate on the basis of race, and an order requiring the LSA to offer Hamacher admission as a transfer student. The District Court granted petitioners' motion to certify a class consisting of

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individuals who applied for and were denied admission to the LSA for academic year 1995 and forward and who are members of racial or ethnic groups that respondents treated less favorably on the basis of race. Hamacher, whose claim was found to challenge racial discrimination on a classwide basis, was designated as the class representative. On cross-motions for summary judgment, respondents relied on Justice Powell's principal opinion in ***245***Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 317, 98 S.Ct. 2733, 57 L.Ed.2d 750, which expressed the view that the consideration of race as a factor in admissions might in some cases serve a compelling government interest. Respondents contended that the LSA has just such an interest in the educational benefits that result from having a racially and ethnically diverse student body and that its program is narrowly tailored to serve that interest. The court agreed with respondents as to the LSA's current admissions guidelines and granted them summary judgment in that respect. However, the court also found that the LSA's admissions guidelines for 1995 through 1998 operated as the functional equivalent of a quota running afoul of Justice Powell's *Bakke* opinion, and thus granted petitioners summary judgment with respect to respondents' admissions programs for those years. While interlocutory appeals were pending in the Sixth Circuit, that court issued an opinion in *Grutter v. Bollinger, ante,* 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304, upholding the admissions program used by the University's Law School. This Court granted certiorari in both cases, even though the Sixth Circuit had not yet rendered judgment in this one.

Held:

1. Petitioners have standing to seek declaratory and injunctive relief. The Court rejects Justice STEVENS' contention that, because Hamacher did not actually apply for admission as a transfer student, his future injury claim is at best conjectural or hypothetical rather than real and immediate. The "injury in fact" necessary to establish standing in this type of case is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656, 666, 113 S.Ct. 2297, 124 L.Ed.2d 586. In the face of such a barrier, to establish standing, a party need only demonstrate that it is able and ready to perform and that a discriminatory ****2415*** policy prevents it from doing so on an equal basis. *Ibid.* In bringing his equal protection challenge against the University's use of race in undergraduate admissions, Hamacher alleged that the University had denied him the opportunity to compete for admission on an equal basis. Hamacher was denied admission to the University as a freshman applicant even though an underrepresented minority applicant with his qualifications would have been admitted. After being denied admission, Hamacher demonstrated that he was "able and ready" to apply as a transfer student should the University cease to use race in undergraduate admissions. He therefore has standing to seek prospective relief with respect to the University's continued use of race. Also rejected is Justice STEVENS' contention that such use in undergraduate transfer admissions differs from the University's use of race in undergraduate freshman admissions, so that Hamacher lacks standing to represent absent class members challenging the latter. Each year the OUA produces a document setting forth ***246*** guidelines for those seeking admission to the LSA, including freshman and transfer applicants. The transfer applicant guidelines specifically cross-reference factors and qualifications considered in assessing freshman applicants. In fact, the criteria used to determine whether a transfer applicant will contribute to diversity are *identical* to those used to evaluate freshman applicants. The *only* difference is that all underrepresented minority freshman applicants receive 20 points and "virtually" all who are minimally qualified are admitted, while "generally" all minimally qualified minority transfer applicants are admitted outright. While this difference might be relevant to a narrow tailoring analysis, it clearly has no effect on petitioners' standing to challenge the University's use of race in undergraduate

admissions and its assertion that diversity is a compelling state interest justifying its consideration of the race of its undergraduate applicants. See *General Telephone Co. of Southwest v. Falcon,* 457 U.S. 147, 159, 102 S.Ct. 2364, 72 L.Ed.2d 740; *Blum v. Yaretsky,* 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534, distinguished. The District Court's carefully considered decision to certify this class action is correct. Cf. *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 469, 98 S.Ct. 2454, 57 L.Ed.2d 351. Hamacher's personal stake, in view of both his past injury and the potential injury he faced at the time of certification, demonstrates that he may maintain the action. Pp. 2422-2426.

2. Because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents' asserted interest in diversity, the policy violates the Equal Protection Clause. For the reasons set forth in *Grutter v. Bollinger, ante,* 539 U.S., at 327-333, 123 S.Ct. 2325, 2003 WL 21433492, the Court has today rejected petitioners' argument that diversity cannot constitute a compelling state interest. However, the Court finds that the University's current policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race, is not narrowly tailored to achieve educational diversity. In *Bakke,* Justice Powell explained his view that it would be permissible for a university to employ an admissions program in which "race or ethnic background may be deemed a 'plus' in a particular applicant's file." 438 U.S., at 317, 98 S.Ct. 2733. He emphasized, however, the importance of considering each particular applicant as an individual, assessing all of the qualities that individual possesses, and in turn, evaluating that individual's ability to contribute to the unique setting of higher education. The admissions program Justice Powell described did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity. See *id.,* at 315, 98 S.Ct. 2733. The current LSA policy does ****2416** not provide the individualized consideration Justice Powell contemplated. The only consideration that accompanies the 20-point automatic distribution to all applicants from underrepresented minorities is a factual review to determine whether an individual is a member ***247** of one of these minority groups. Moreover, unlike Justice Powell's example, where the race of a "particular black applicant" could be considered without being decisive, see *id.,* at 317, 98 S.Ct. 2733, the LSA's 20-point distribution has the effect of making "the factor of race ... decisive" for virtually every minimally qualified underrepresented minority applicant, *ibid.* The fact that the LSA has created the possibility of an applicant's file being flagged for individualized consideration only emphasizes the flaws of the University's system as a whole when compared to that described by Justice Powell. The record does not reveal precisely how many applications are flagged, but it is undisputed that such consideration is the exception and not the rule in the LSA's program. Also, this individualized review is only provided *after* admissions counselors automatically distribute the University's version of a "plus" that makes race a decisive factor for virtually every minimally qualified underrepresented minority applicant. The Court rejects respondents' contention that the volume of applications and the presentation of applicant information make it impractical for the LSA to use the admissions system upheld today in *Grutter.* The fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system. See, *e.g., Richmond v. J.A. Croson Co.,* 488 U.S. 469, 508, 109 S.Ct. 706, 102 L.Ed.2d 854. Nothing in Justice Powell's *Bakke* opinion signaled that a university may employ whatever means it desires to achieve diversity without regard to the limits imposed by strict scrutiny. Pp. 2426-2430.

3. Because the University's use of race in its current freshman admissions policy violates the Equal Protection Clause, it also violates Title VI and § 1981. See, *e.g., Alexander v. Sandoval,* 532 U.S.

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275, 281, 121 S.Ct. 1511, 149 L.Ed.2d 517; *General Building Contractors Assn. v. Pennsylvania,* 458 U.S. 375, 389-390, 102 S.Ct. 3141, 73 L.Ed.2d 835. Accordingly, the Court reverses that portion of the District Court's decision granting respondents summary judgment with respect to liability. Pp. 2430- 2431.

Reversed in part and remanded.

REHNQUIST, C.J. delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. O'CONNOR, J., filed a concurring opinion, in which BREYER, J., joined in part, *post,* p. 2431. THOMAS, J., filed a concurring opinion, *post,* p. 2433. BREYER, J., filed an opinion concurring in the judgment, *post,* p. 2433. STEVENS, J., filed a dissenting opinion, in which SOUTER, J., joined, *post,* p. 2434. SOUTER, J., filed a dissenting opinion, in which GINSBURG, J., joined as to Part II, *post,* p. 2438. GINSBURG, J., filed a dissenting opinion, in which SOUTER, J., joined, and in which BREYER, J., joined as to Part I, *post,* p. 2442.

***248** Kirk O. Kolbo, Minneapolis, MN, for petitioners.

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***249** Chief Justice REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to decide whether "the University of Michigan's use of racial preferences in undergraduate ***250** admissions violate[s] the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), or 42 U.S.C. § 1981." Brief ***251** for Petitioners i. Because we find that the manner in which the University considers the race of applicants in its undergraduate admissions guidelines violates these constitutional and statutory provisions, we reverse that portion of the District Court's decision upholding the guidelines.

I

539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257, 71 USLW 4480, 91 Fair Empl.Prac.Cas. (BNA) 1803, 84 Empl. Prac. Dec. P 41,416, 177 Ed. Law Rep. 851, 03 Cal. Daily Op. Serv. 5362, 2003 Daily Journal D.A.R. 6783, 16 Fla. L. Weekly Fed. S 387

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A

Petitioners Jennifer Gratz and Patrick Hamacher both applied for admission to the University of Michigan's (University) College of Literature, Science, and the Arts (LSA) as residents of the State of Michigan. Both petitioners are Caucasian. Gratz, who applied for admission for the fall of 1995, was notified in January of that year that a final decision regarding her admission had been delayed until April. This delay was based upon the University's determination that, although Gratz was " 'well qualified,' " she was " 'less competitive than the students who ha[d] been admitted on first review.' " App. to Pet. for Cert. 109a. Gratz was notified in April that the LSA was unable to offer her admission. She enrolled in the University of Michigan at Dearborn, from which she graduated in the spring of 1999.

Hamacher applied for admission to the LSA for the fall of 1997. A final decision as to his application was also postponed because, though his " 'academic credentials [were] in the qualified range, they [were] not at the level needed for first review admission.' " *Ibid.* Hamacher's application was subsequently denied in April 1997, and he enrolled at Michigan State University. [FN1]

> FN1. Although Hamacher indicated that he "intend[ed] to apply to transfer if the [LSA's] discriminatory admissions system [is] eliminated," he has since graduated from Michigan State University. App. 34.

***252** In October 1997, Gratz and Hamacher filed a lawsuit in the United States District Court for the Eastern District of Michigan ****2418** against the University, the LSA, [FN2] James Duderstadt, and Lee Bollinger. [FN3] Petitioners' complaint was a class-action suit alleging "violations and threatened violations of the rights of the plaintiffs and the class they represent to equal protection of the laws under the Fourteenth Amendment ..., and for racial discrimination in violation of 42 U.S.C. §§ 1981, 1983 and 2000d *et seq.*" App. 33. Petitioners sought, *inter alia,* compensatory and punitive damages for past violations, declaratory relief finding that respondents violated petitioners' "rights to nondiscriminatory treatment," an injunction prohibiting respondents from "continuing to discriminate on the basis of race in violation of the Fourteenth Amendment," and an order requiring the LSA to offer Hamacher admission as a transfer student. [FN4] *Id.*, at 40.

> FN2. The University of Michigan Board of Regents was subsequently named as the proper defendant in place of the University and the LSA. See *id.*, at 17.
>
> FN3. Duderstadt was the president of the University during the time that Gratz's application was under consideration. He has been sued in his individual capacity. Bollinger was the president of the University when Hamacher applied for admission. He was originally sued in both his individual and official capacities, but he is no longer the president of the University. *Id.*, at 35.
>
> FN4. A group of African-American and Latino students who applied for, or intended to apply for, admission to the University, as well as the Citizens for Affirmative Action's Preservation, a nonprofit organization in Michigan, sought to intervene pursuant to Federal Rule of Civil Procedure 24. See App. 13-14. The District Court originally denied this request, see *id.*, at 14-15, but the Sixth Circuit reversed that decision. See *Gratz v. Bollinger,* 188 F.3d 394 (1999).

The District Court granted petitioners' motion for class certification after determining that a class action was appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2). The certified class consisted of "those individuals who applied for and were not granted admission to the College of ***253** Literature, Science & the Arts of the University of Michigan for all academic years from 1995 forward

and who are members of those racial or ethnic groups, including Caucasian, that defendants treat[ed] less favorably on the basis of race in considering their application for admission." App. 70-71. And Hamacher, whose claim the District Court found to challenge a " 'practice of racial discrimination pervasively applied on a classwide basis,' " was designated as the class representative. *Id.*, at 67, 70. The court also granted petitioners' motion to bifurcate the proceedings into a liability and damages phase. *Id.*, at 71. The liability phase was to determine "whether [respondents'] use of race as a factor in admissions decisions violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution." *Id.*, at 70. [FN5]

> FN5. The District Court decided also to consider petitioners' request for injunctive and declaratory relief during the liability phase of the proceedings. App. 71.

B

The University has changed its admissions guidelines a number of times during the period relevant to this litigation, and we summarize the most significant of these changes briefly. The University's Office of Undergraduate Admissions (OUA) oversees the LSA admissions process. [FN6] In order to promote consistency in the review of the large number of applications received, the OUA uses written guidelines for each academic year. Admissions counselors make admissions decisions in accordance with these guidelines.

> FN6. Our description is taken, in large part, from the "Joint Proposed Summary of Undisputed Facts Regarding Admissions Process" filed by the parties in the District Court. App. to Pet. for Cert. 108a-117a.

OUA considers a number of factors in making admissions decisions, including high school grades, standardized test scores, high school quality, curriculum ****2419** strength, geography, alumni relationships, and leadership. OUA also considers race. During all periods relevant to this litigation, the University ***254** has considered African-Americans, Hispanics, and Native Americans to be "underrepresented minorities," and it is undisputed that the University admits "virtually every qualified ... applicant" from these groups. App. to Pet. for Cert. 111a.

During 1995 and 1996, OUA counselors evaluated applications according to grade point average combined with what were referred to as the "SCUGA" factors. These factors included the quality of an applicant's high school (S), the strength of an applicant's high school curriculum (C), an applicant's unusual circumstances (U), an applicant's geographical residence (G), and an applicant's alumni relationships (A). After these scores were combined to produce an applicant's "GPA 2" score, the reviewing admissions counselors referenced a set of "Guidelines" tables, which listed GPA 2 ranges on the vertical axis, and American College Test/Scholastic Aptitude Test (ACT/SAT) scores on the horizontal axis. Each table was divided into cells that included one or more courses of action to be taken, including admit, reject, delay for additional information, or postpone for reconsideration.

In both years, applicants with the same GPA 2 score and ACT/SAT score were subject to different admissions outcomes based upon their racial or ethnic status. [FN7] For example, as a Caucasian in-state applicant, Gratz's GPA 2 score and ACT score placed her within a cell calling for a postponed decision on her application. An in-state or out-of-state minority applicant with Gratz's scores would have fallen within a cell calling for admission.

> FN7. In 1995, counselors used four such tables for different groups of applicants: (1) in-state, nonminority applicants; (2) out-of-state, nonminority applicants; (3) in-state, minority applicants; and (4) out-of-state, minority applicants. In 1996, only two tables were used, one for in-state applicants and one for out-of-state

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applicants. But each cell on these two tables contained separate courses of action for minority applicants and nonminority applicants whose GPA 2 scores and ACT/SAT scores placed them in that cell.

***255** In 1997, the University modified its admissions procedure. Specifically, the formula for calculating an applicant's GPA 2 score was restructured to include additional point values under the "U" category in the SCUGA factors. Under this new system, applicants could receive points for underrepresented minority status, socioeconomic disadvantage, or attendance at a high school with a predominantly underrepresented minority population, or underrepresentation in the unit to which the student was applying (for example, men who sought to pursue a career in nursing). Under the 1997 procedures, Hamacher's GPA 2 score and ACT score placed him in a cell on the in-state applicant table calling for postponement of a final admissions decision. An underrepresented minority applicant placed in the same cell would generally have been admitted.

Beginning with the 1998 academic year, the OUA dispensed with the Guidelines tables and the SCUGA point system in favor of a "selection index," on which an applicant could score a maximum of 150 points. This index was divided linearly into ranges generally calling for admissions dispositions as follows: 100-150 (admit); 95-99 (admit or postpone); 90-94 (postpone or admit); 75-89 (delay or postpone); 74 and below (delay or reject).

Each application received points based on high school grade point average, standardized test scores, academic quality of an applicant's high school, strength or weakness of high school curriculum, in-state residency, alumni relationship, personal essay, and personal achievement or leadership. Of particular significance here, under a "miscellaneous" category, an applicant was entitled to 20 points based upon his or her membership in an underrepresented racial or ethnic minority group. The University explained that the ****2420** " 'development of the selection index for admissions in 1998 changed only the mechanics, not the substance, of how race and ethnicity [were] considered in admissions.' " App. to Pet. for Cert. 116a.

***256** In all application years from 1995 to 1998, the guidelines provided that qualified applicants from underrepresented minority groups be admitted as soon as possible in light of the University's belief that such applicants were more likely to enroll if promptly notified of their admission. Also from 1995 through 1998, the University carefully managed its rolling admissions system to permit consideration of certain applications submitted later in the academic year through the use of "protected seats." Specific groups--including athletes, foreign students, ROTC candidates, and underrepresented minorities-- were "protected categories" eligible for these seats. A committee called the Enrollment Working Group (EWG) projected how many applicants from each of these protected categories the University was likely to receive after a given date and then paced admissions decisions to permit full consideration of expected applications from these groups. If this space was not filled by qualified candidates from the designated groups toward the end of the admissions season, it was then used to admit qualified candidates remaining in the applicant pool, including those on the waiting list.

During 1999 and 2000, the OUA used the selection index, under which every applicant from an underrepresented racial or ethnic minority group was awarded 20 points. Starting in 1999, however, the University established an Admissions Review Committee (ARC), to provide an additional level of consideration for some applications. Under the new system, counselors may, in their discretion, "flag" an application for the ARC to review after determining that the applicant (1) is academically prepared to succeed at the University, [FN8] (2) has achieved a minimum selection index score, and (3) possesses a quality or characteristic important to the University's composition ***257** of its freshman class,

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such as high class rank, unique life experiences, challenges, circumstances, interests or talents, socioeconomic disadvantage, and underrepresented race, ethnicity, or geography. After reviewing "flagged" applications, the ARC determines whether to admit, defer, or deny each applicant.

> FN8. LSA applicants who are Michigan residents must accumulate 80 points from the selection index criteria to be flagged, while out-of-state applicants need to accumulate 75 points to be eligible for such consideration. See App. 257.

C

The parties filed cross-motions for summary judgment with respect to liability. Petitioners asserted that the LSA's use of race as a factor in admissions violates Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, and the Equal Protection Clause of the Fourteenth Amendment. Respondents relied on Justice Powell's opinion in *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), to respond to petitioners' arguments. As discussed in greater detail in the Court's opinion in *Grutter v. Bollinger, ante,* 539 U.S., at 323-325, 123 S.Ct. 2325, 2003 WL 21433492, Justice Powell, in *Bakke,* expressed the view that the consideration of race as a factor in admissions might in some cases serve a compelling government interest. See 438 U.S., at 317, 98 S.Ct. 2733. Respondents contended that the LSA has just such an interest in the educational benefits that result from having a racially and ethnically diverse student body and that its program is narrowly tailored to serve that interest. Respondent-intervenors asserted that the LSA had a compelling interest in remedying the University's past and current discrimination against minorities. [FN9]

> FN9. The District Court considered and rejected respondent-intervenors' arguments in a supplemental opinion and order. See 135 F.Supp.2d 790 (E.D.Mich.2001). The court explained that respondent-intervenors "failed to present any evidence that the discrimination alleged by them, or the continuing effects of such discrimination, was the real justification for the LSA's race-conscious admissions programs." *Id.,* at 795. We agree, and to the extent respondent-intervenors reassert this justification, a justification the University has *never* asserted throughout the course of this litigation, we affirm the District Court's disposition of the issue.

****2421 *258** The District Court began its analysis by reviewing this Court's decision in *Bakke.* See 122 F.Supp.2d 811, 817 (E.D.Mich.2000). Although the court acknowledged that no decision from this Court since *Bakke* has explicitly accepted the diversity rationale discussed by Justice Powell, see 122 F.Supp.2d, at 820-821, it also concluded that this Court had not, in the years since *Bakke,* ruled out such a justification for the use of race, 122 F.Supp.2d, at 820-821. The District Court concluded that respondents and their *amici curiae* had presented "solid evidence" that a racially and ethnically diverse student body produces significant educational benefits such that achieving such a student body constitutes a compelling governmental interest. See *id.,* at 822-824.

The court next considered whether the LSA's admissions guidelines were narrowly tailored to achieve that interest. See *id.,* at 824. Again relying on Justice Powell's opinion in *Bakke,* the District Court determined that the admissions program the LSA began using in 1999 is a narrowly tailored means of achieving the University's interest in the educational benefits that flow from a racially and ethnically diverse student body. See 122 F.Supp.2d, at 827. The court emphasized that the LSA's current program does not utilize rigid quotas or seek to admit a predetermined number of minority students. See *ibid.* The award of 20 points for membership in an underrepresented minority group, in the District Court's view, was not the functional equivalent of a quota because

539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257, 71 USLW 4480, 91 Fair Empl.Prac.Cas. (BNA) 1803, 84 Empl. Prac. Dec. P 41,416, 177 Ed. Law Rep. 851, 03 Cal. Daily Op. Serv. 5362, 2003 Daily Journal D.A.R. 6783, 16 Fla. L. Weekly Fed. S 387

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minority candidates were not insulated from review by virtue of those points. See *id.*, at 828. Likewise, the court rejected the assertion that the LSA's program operates like the two-track system Justice Powell found objectionable in *Bakke* on the grounds that LSA applicants are not competing for different groups of seats. See 122 F.Supp.2d, at 828-829. The court also dismissed petitioners' assertion that the LSA's current system is nothing more than a means by which to achieve racial balancing. See *id.*, at 831. The court explained that the LSA does not seek to ***259** achieve a certain proportion of minority students, let alone a proportion that represents the community. See *ibid.*

The District Court found the admissions guidelines the LSA used from 1995 through 1998 to be more problematic. In the court's view, the University's prior practice of "protecting" or "reserving" seats for underrepresented minority applicants effectively kept nonprotected applicants from competing for those slots. See *id.*, at 832. This system, the court concluded, operated as the functional equivalent of a quota and ran afoul of Justice Powell's opinion in *Bakke*. [FN10] See 122 F.Supp.2d, at 832.

> FN10. The District Court determined that respondents Bollinger and Duderstadt, who were sued in their individual capacities under Rev. Stat. § 1979, 42 U.S.C. § 1983, were entitled to summary judgment based on the doctrine of qualified immunity. See 122 F.Supp.2d, at 833-834. Petitioners have not asked this Court to review this aspect of the District Court's decision. The District Court denied the Board of Regents' motion for summary judgment with respect to petitioners' Title VI claim on Eleventh Amendment immunity grounds. See *id.*, at 834-836. Respondents have not asked this Court to review this aspect of the District Court's decision.

Based on these findings, the court granted petitioners' motion for summary judgment with respect to the LSA's admissions programs in existence from 1995 through 1998, and respondents' motion with respect to the LSA's admissions programs for 1999 and 2000. See *id.*, at 833. Accordingly, ****2422** the District Court denied petitioners' request for injunctive relief. See *id.*, at 814.

The District Court issued an order consistent with its rulings and certified two questions for interlocutory appeal to the Sixth Circuit pursuant to 28 U.S.C. § 1292(b). Both parties appealed aspects of the District Court's rulings, and the Court of Appeals heard the case en banc on the same day as *Grutter v. Bollinger*. The Sixth Circuit later issued an opinion in *Grutter*, upholding the admissions program used by the University of Michigan Law School, and the petitioner in that case sought a writ of certiorari from this Court. Petitioners asked this Court to grant certiorari in this case as ***260** well, despite the fact that the Court of Appeals had not yet rendered a judgment, so that this Court could address the constitutionality of the consideration of race in university admissions in a wider range of circumstances. We did so. See 537 U.S. 1044, 123 S.Ct. 617, 154 L.Ed.2d 514 (2002).

II

As they have throughout the course of this litigation, petitioners contend that the University's consideration of race in its undergraduate admissions decisions violates § 1 of the Equal Protection Clause of the Fourteenth Amendment, [FN11] Title VI, [FN12] and 42 U.S.C. § 1981. [FN13] We consider first whether petitioners have standing to seek declaratory and injunctive relief, and, finding that they do, we next consider the merits of their claims.

> FN11. The Equal Protection Clause of the Fourteenth Amendment explains that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws."
>
> FN12. Title VI provides that "[n]o person

> in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.
>
> FN13. Section 1981(a) provides:
> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, ... and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

A

Although no party has raised the issue, Justice STEVENS argues that petitioners lack Article III standing to seek injunctive relief with respect to the University's use of race in undergraduate admissions. He first contends that because Hamacher did not "actually appl[y] for admission as a transfer student[,][h]is claim of future injury is at best 'conjectural or hypothetical' rather than 'real and immediate.' " *Post,* at 2436 (dissenting opinion). But whether Hamacher "actually applied" for admission as a transfer student is not ***261** determinative of his ability to seek injunctive relief in this case. If Hamacher had submitted a transfer application and been rejected, he would still need to allege an intent to apply again in order to seek prospective relief. If Justice STEVENS means that because Hamacher did not apply to transfer, he must never *really* have intended to do so, that conclusion directly conflicts with the finding of fact entered by the District Court that Hamacher "intends to transfer to the University of Michigan when defendants cease the use of race as an admissions preference." App. 67. [FN14]

> FN14. This finding is further corroborated by Hamacher's request that the District Court "[r]equir[e] the LSA College to offer [him] admission as a transfer student." App. 40.

[1][2] It is well established that intent may be relevant to standing in an equal protection challenge. In *Clements v. Fashing,* 457 U.S. 957, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982), for example, we considered a challenge to a provision of the Texas Constitution requiring the immediate resignation of certain state officeholders upon their announcement of candidacy for another office. We concluded that the ****2423** plaintiff officeholders had Article III standing because they had alleged that they *would have announced their candidacy* for other offices were it not for the "automatic resignation" provision they were challenging. *Id.,* at 962, 102 S.Ct. 2836; accord, *Turner v. Fouche,* 396 U.S. 346, 361-362, n. 23, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970) (plaintiff who did not own property had standing to challenge property ownership requirement for membership on school board even though there was no evidence that plaintiff had applied and been rejected); *Quinn v. Millsap,* 491 U.S. 95, 103, n. 8, 109 S.Ct. 2324, 105 L.Ed.2d 74 (1989) (plaintiffs who did not own property had standing to challenge property ownership requirement for membership on government board even though they lacked standing to challenge the requirement "as applied"). Likewise, in *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993), we considered whether an association challenging an ordinance that gave preferential treatment to certain ***262** minority-owned businesses in the award of city contracts needed to show that one of its members would have received a contract absent the ordinance in order to establish standing. In finding that no such showing was necessary, we explained that "[t]he 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit .... And in the context of a challenge to a set-aside program, the 'injury in fact' is the inability to compete on an equal footing in the bidding process, not the loss of contract." *Id.,* at 666, 113

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S.Ct. 2297. We concluded that in the face of such a barrier, "[t]o establish standing ..., a party challenging a set-aside program like Jacksonville's need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis." *Ibid.*

[3] In bringing his equal protection challenge against the University's use of race in undergraduate admissions, Hamacher alleged that the University had denied him the opportunity to compete for admission on an equal basis. When Hamacher applied to the University as a freshman applicant, he was denied admission even though an underrepresented minority applicant with his qualifications would have been admitted. See App. to Pet. for Cert. 115a. After being denied admission, Hamacher demonstrated that he was "able and ready" to apply as a transfer student should the University cease to use race in undergraduate admissions. He therefore has standing to seek prospective relief with respect to the University's continued use of race in undergraduate admissions.

[4] Justice STEVENS raises a second argument as to standing. He contends that the University's use of race in undergraduate transfer admissions differs from its use of race in undergraduate freshman admissions, and that therefore Hamacher lacks standing to represent absent class members challenging the latter. *Post,* at 2436 (dissenting opinion). ***263** As an initial matter, there is a question whether the relevance of this variation, if any, is a matter of Article III standing at all or whether it goes to the propriety of class certification pursuant to Federal Rule of Civil Procedure 23(a). The parties have not briefed the question of standing versus adequacy, however, and we need not resolve the question today: Regardless of whether the requirement is deemed one of adequacy or standing, it is clearly satisfied in this case. [FN15]

> FN15. Although we do not resolve here whether such an inquiry in this case is appropriately addressed under the rubric of standing or adequacy, we note that there is tension in our prior cases in this regard. See, *e.g.,* Burns, Standing and Mootness in Class Actions: A Search for Consistency, 22 U.C.D.L.Rev. 1239, 1240-1241 (1989); *General Telephone Co. of Southwest v. Falcon,* 457 U.S. 147, 149, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982) (Mexican-American plaintiff alleging that he was passed over for a promotion because of race was not an adequate representative to "maintain a class action on behalf of Mexican-American applicants" who were not hired by the same employer); *Blum v. Yaretsky,* 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982) (class representatives who had been transferred to lower levels of medical care lacked standing to challenge transfers to higher levels of care).

****2424** From the time petitioners filed their original complaint through their brief on the merits in this Court, they have consistently challenged the University's use of race in undergraduate admissions and its asserted justification of promoting "diversity." See, *e.g.,* App. 38; Brief for Petitioners 13. Consistent with this challenge, petitioners requested injunctive relief prohibiting respondents "from continuing to discriminate on the basis of race." App. 40. They sought to certify a class consisting of all individuals who were not members of an underrepresented minority group who either had applied for admission to the LSA and been rejected or who intended to apply for admission to the LSA, for all academic years from 1995 forward. *Id.,* at 35-36. The District Court determined that the proposed class satisfied the requirements of the Federal Rules of Civil Procedure, including the requirements of numerosity, commonality, and typicality. See Fed. Rule Civ. Proc. 23(a); App. 70. The court further concluded that Hamacher was an adequate representative ***264** for the class in the pursuit of compensatory and injunctive relief for purposes of

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Rule 23(a)(4), see *id.,* at 61-69, and found "the record utterly devoid of the presence of ... antagonism between the interests of ... Hamacher, and the members of the class which [he] seek[s] to represent," *id.,* at 61. Finally, the District Court concluded that petitioners' claim was appropriate for class treatment because the University's " 'practice of racial discrimination pervasively applied on a classwide basis.' " *Id.,* at 67. The court certified the class pursuant to Federal Rule of Civil Procedure 23(b)(2), and designated Hamacher as the class representative. App. 70.

Justice STEVENS cites *Blum v. Yaretsky,* 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982), in arguing that the District Court erred. *Post,* at 2437. In *Blum,* we considered a class-action suit brought by Medicaid beneficiaries. The named representatives in *Blum* challenged decisions by the State's Medicaid Utilization Review Committee (URC) to transfer them to lower levels of care without, in their view, sufficient procedural safeguards. After a class was certified, the plaintiffs obtained an order expanding class certification to include challenges to URC decisions to transfer patients to *higher* levels of care as well. The defendants argued that the named representatives could not represent absent class members challenging transfers to higher levels of care because they had not been threatened with such transfers. We agreed. We noted that "[n]othing in the record ... suggests that any of the individual respondents have been either transferred to more intensive care or threatened with such transfers." 457 U.S., at 1001, 102 S.Ct. 2777. And we found that transfers to lower levels of care involved a number of fundamentally different concerns than did transfers to higher ones. *Id.,* at 1001-1002, 102 S.Ct. 2777 (noting, for example, that transfers to lower levels of care implicated beneficiaries' property interests given the concomitant decrease in Medicaid benefits, while transfers to higher levels of care did not).

***265** In the present case, the University's use of race in undergraduate transfer admissions does not implicate a significantly different set of concerns than does its use of race in undergraduate freshman admissions. Respondents challenged Hamacher's standing at the certification stage, but *never* did so on the grounds that the University's use of race in undergraduate transfer admissions involves a different set ****2425** of concerns than does its use of race in freshman admissions. Respondents' failure to allege any such difference is simply consistent with the fact that no such difference exists. Each year the OUA produces a document entitled "COLLEGE OF LITERATURE, SCIENCE AND THE ARTS GUIDELINES FOR ALL TERMS," which sets forth guidelines for all individuals seeking admission to the LSA, including freshman applicants, transfer applicants, international student applicants, and the like. See, *e.g.,* 2 App. in No. 01-1333 etc. (CA6), pp. 507-542. The guidelines used to evaluate transfer applicants specifically cross-reference factors and qualifications considered in assessing freshman applicants. In fact, the criteria used to determine whether a transfer applicant will contribute to the University's stated goal of diversity are *identical* to that used to evaluate freshman applicants. For example, in 1997, when the class was certified and the District Court found that Hamacher had standing to represent the class, the transfer guidelines contained a separate section entitled "CONTRIBUTION TO A DIVERSE STUDENT BODY." 2 *id.,* at 531. This section explained that any transfer applicant who could "*contribut[e] to a diverse student body*" should "generally be admitted" even with substantially lower qualifications than those required of other transfer applicants. *Ibid.* (emphasis added). To determine whether a transfer applicant was capable of "contribut[ing] to a diverse student body," admissions counselors were instructed to determine whether that transfer applicant met the "criteria as defined in Section IV of the 'U' category of [the] SCUGA" factors used to assess ***266** freshman applicants. *Ibid.* Section IV of the "U" category, entitled "Contribution to a Diverse Class," explained that "[t]he University is committed to a rich educational experience for its students. A diverse, as opposed to a homogenous,

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student population enhances the educational experience for all students. To insure a diverse class, significant weight will be given in the admissions process to indicators of students contribution to a diverse class." 1 *id.*, at 432. These indicators, used in evaluating freshman and transfer applicants alike, list being a member of an underrepresented minority group as establishing an applicant's contribution to diversity. See 3 *id.*, at 1133-1134, 1153-1154. Indeed, the *only* difference between the University's use of race in considering freshman and transfer applicants is that all underrepresented minority freshman applicants receive 20 points and "virtually" all who are minimally qualified are admitted, while "generally" all minimally qualified minority transfer applicants are admitted outright. While this difference might be relevant to a narrow tailoring analysis, it clearly has no effect on petitioners' standing to challenge the University's use of race in undergraduate admissions and its assertion that diversity is a compelling state interest that justifies its consideration of the race of its undergraduate applicants. [FN16]

> FN16. Because the University's guidelines concededly use race in evaluating both freshman and transfer applications, and because petitioners have challenged *any* use of race by the University in undergraduate admissions, the transfer admissions policy is very much before this Court. Although petitioners did not raise a narrow tailoring challenge to the transfer policy, as counsel for petitioners repeatedly explained, the transfer policy is before this Court in that petitioners challenged any use of race by the University to promote diversity, including through the transfer policy. See Tr. of Oral Arg. 4 ("[T]he [transfer] policy is essentially the same with respect to the consideration of race"); *id.*, at 5 ("The transfer policy considers race"); *id.*, at 6 (same); *id.*, at 7 ("[T]he transfer policy and the [freshman] admissions policy are fundamentally the same in the respect that they both consider race in the admissions process in a way that is discriminatory"); *id.*, at 7-8 ("[T]he University considers race for a purpose to achieve a diversity that we believe is not compelling, and if that is struck down as a rationale, then the [result] would be [the] same with respect to the transfer policy as with respect to the [freshman] admissions policy, Your Honor").

****2426 *267** Particularly instructive here is our statement in *General Telephone Co. of Southwest v. Falcon,* 457 U.S. 147, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982), that "[i]f [defendant-employer] used a biased testing procedure to evaluate both applicants for employment and incumbent employees, a class action on behalf of every applicant or employee who might have been prejudiced by the test *clearly* would satisfy the ... requirements of Rule 23(a)." *Id.*, at 159, n. 15, 102 S.Ct. 2364 (emphasis added). Here, the District Court found that the sole rationale the University had provided for any of its race-based preferences in undergraduate admissions was the interest in "the educational benefits that result from having a diverse student body." App. to Pet. for Cert. 8a. And petitioners argue that an interest in "diversity" is not a compelling state interest that is *ever* capable of justifying the use of race in undergraduate admissions. See, *e.g.*, Brief for Petitioners 11-13. In sum, the same set of concerns is implicated by the University's use of race in evaluating all undergraduate admissions applications under the guidelines. [FN17] We therefore agree with the District Court's ***268** carefully considered decision to certify this class-action challenge to the University's consideration of race in undergraduate admissions. See App. 67 (" 'It is a singular policy ... applied on a classwide basis' "); cf. *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 469, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978) ("[T]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action" (internal quotation marks

omitted)). Indeed, class-action treatment was particularly important in this case because "the claims of the individual students run the risk of becoming moot" and the "[t]he class action vehicle ... provides a mechanism for ensuring that a justiciable claim is before the Court." App. 69. Thus, we think it clear that Hamacher's personal stake, in view of both his past injury and the potential injury he faced at the time of certification, demonstrates that he may maintain this class-action challenge to the University's use of race in undergraduate admissions.

FN17. Indeed, as the litigation history of this case demonstrates, "the class-action device save[d] the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion." *Califano v. Yamasaki,* 442 U.S. 682, 701, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979). This case was therefore quite unlike *General Telephone Co. of Southwest v. Falcon,* 457 U.S. 147, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982), in which we found that the named representative, who had been passed over for a promotion, was not an adequate representative for absent class members who were never hired in the first instance. As we explained, the plaintiff's "evidentiary approaches to the individual and class claims were entirely different. He attempted to sustain his individual claim by proving intentional discrimination. He tried to prove the class claims through statistical evidence of disparate impact.... It is clear that the maintenance of respondent's action as a class action did not advance 'the efficiency and economy of litigation which is a principal purpose of the procedure.' " *Id.,* at 159, 102 S.Ct. 2364 (quoting *American Pipe & Constr. Co. v. Utah,* 414 U.S. 538, 553, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974)).

B

[5] Petitioners argue, first and foremost, that the University's use of race in undergraduate admissions violates the Fourteenth Amendment. Specifically, they contend that this Court has only sanctioned the use of racial classifications to remedy identified discrimination, a justification on which respondents have never relied. Brief for Petitioners 15-16. Petitioners further argue that "diversity as a basis for employing racial preferences is simply too open-ended, ill-defined, and indefinite to constitute a compelling interest capable of supporting narrowly-tailored means." *Id.,* at 17-18, 40- 41. But for the reasons set forth today in **2427*Grutter v. Bollinger, ante,* 539 U.S., at 327-333, 123 S.Ct. 2325, 2003 WL 21433492, the Court has rejected these arguments of petitioners.

***269** Petitioners alternatively argue that even if the University's interest in diversity can constitute a compelling state interest, the District Court erroneously concluded that the University's use of race in its current freshman admissions policy is narrowly tailored to achieve such an interest. Petitioners argue that the guidelines the University began using in 1999 do not "remotely resemble the kind of consideration of race and ethnicity that Justice Powell endorsed in *Bakke.*" Brief for Petitioners 18. Respondents reply that the University's current admissions program *is* narrowly tailored and avoids the problems of the Medical School of the University of California at Davis program (U.C. Davis) rejected by Justice Powell. [FN18] They claim that their program "hews closely" to both the admissions program described by Justice Powell as well as the Harvard College admissions program that he endorsed. Brief for Respondent Bollinger et al 32. Specifically, respondents contend that the LSA's policy provides the individualized consideration that "Justice Powell considered a hallmark of a constitutionally appropriate admissions program." *Id.,* at 35. For the reasons set out below, we do not agree.

FN18. U.C. Davis set aside 16 of the 100

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> seats available in its first year medical school program for "economically and/or educationally disadvantaged" applicants who were also members of designated "minority groups" as defined by the university. "To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete only for 84 seats in the entering class, rather than the 100 open to minority applicants." *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 274, 289, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) (principal opinion). Justice Powell found that the program employed an impermissible two-track system that "disregard [ed] ... individual rights as guaranteed by the Fourteenth Amendment." *Id.,* at 320, 98 S.Ct. 2733. He reached this conclusion even though the university argued that "the reservation of a specified number of seats in each class for individuals from the preferred ethnic groups" was "the only effective means of serving the interest of diversity." *Id.,* at 315, 98 S.Ct. 2733. Justice Powell concluded that such arguments misunderstood the very nature of the diversity he found to be compelling. See *ibid.*

[6] ***270** It is by now well established that "all racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized." *Adarand Constructors, Inc. v. Peña,* 515 U.S. 200, 224, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995). This " 'standard of review ... is not dependent on the race of those burdened or benefited by a particular classification.' " *Ibid.* (quoting *Richmond v. J.A. Croson Co.,* 488 U.S. 469, 494, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality opinion)). Thus, "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny." *Adarand,* 515 U.S., at 224, 115 S.Ct. 2097.

[7] To withstand our strict scrutiny analysis, respondents must demonstrate that the University's use of race in its current admissions program employs "narrowly tailored measures that further compelling governmental interests." *Id.,* at 227, 115 S.Ct. 2097. Because "[r]acial classifications are simply too pernicious to permit any but the most exact connection between justification and classification," *Fullilove v. Klutznick,* 448 U.S. 448, 537, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980) (STEVENS, J., dissenting), our review of whether such requirements have been met must entail " 'a most searching examination.' " *Adarand, supra,* at 223, 115 S.Ct. 2097 (quoting *Wygant v. Jackson Bd. of Ed.,* 476 U.S. 267, 273, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986) (plurality opinion of Powell, J.)). We find that the University's policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race, is not narrowly tailored to achieve the interest in educational diversity ****2428** that respondents claim justifies their program.

In *Bakke,* Justice Powell reiterated that "[p]referring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake." 438 U.S., at 307, 98 S.Ct. 2733. He then explained, however, that in his view it would be permissible for a university to employ an admissions program in which "race or ethnic background may be ***271** deemed a 'plus' in a particular applicant's file." *Id.,* at 317, 98 S.Ct. 2733. He explained that such a program might allow for "[t]he file of a particular black applicant [to] be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism." *Ibid.* Such a system, in Justice Powell's view, would be "flexible enough to consider all pertinent elements

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of diversity in light of the particular qualifications of each applicant." *Ibid.*

Justice Powell's opinion in *Bakke* emphasized the importance of considering each particular applicant as an individual, assessing all of the qualities that individual possesses, and in turn, evaluating that individual's ability to contribute to the unique setting of higher education. The admissions program Justice Powell described, however, did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity. See *id.,* at 315, 98 S.Ct. 2733. See also *Metro Broadcasting, Inc. v. FCC,* 497 U.S. 547, 618, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990) (O'CONNOR, J., dissenting) (concluding that the Federal Communications Commission's policy, which "embodie[d] the related notions ... that a particular applicant, by virtue of race or ethnicity alone, is more valued than other applicants because [the applicant is] 'likely to provide [a] distinct perspective,' " "impermissibly value[d] individuals" based on a presumption that "persons think in a manner associated with their race"). Instead, under the approach Justice Powell described, each characteristic of a particular applicant was to be considered in assessing the applicant's entire application.

The current LSA policy does not provide such individualized consideration. The LSA's policy automatically distributes 20 points to every single applicant from an "underrepresented minority" group, as defined by the University. The only consideration that accompanies this distribution of ***272** points is a factual review of an application to determine whether an individual is a member of one of these minority groups. Moreover, unlike Justice Powell's example, where the race of a "particular black applicant" could be considered without being decisive, see *Bakke,* 438 U.S., at 317, 98 S.Ct. 2733, the LSA's automatic distribution of 20 points has the effect of making "the factor of race ... decisive" for virtually every minimally qualified underrepresented minority applicant. *Ibid.* [FN19]

FN19. Justice SOUTER recognizes that the LSA's use of race is decisive in practice, but he attempts to avoid that fact through unsupported speculation about the self-selection of minorities in the applicant pool. See *post,* at 2441-2442 (dissenting opinion).

Also instructive in our consideration of the LSA's system is the example provided in the description of the Harvard College Admissions Program, which Justice Powell both discussed in, and attached to, his opinion in *Bakke.* The example was included to "illustrate the kind of significance attached to race" under the Harvard College program. *Id.,* at 324, 98 S.Ct. 2733. It provided as follows:

> "The Admissions Committee, with only a few places left to fill, might find itself forced to choose between A, the child of a successful black physician in an academic community with promise of superior academic performance, and B, a black who grew up in an inner-city ghetto of semi-literate parents whose academic ****2429** achievement was lower but who had demonstrated energy and leadership as well as an apparently abiding interest in black power. If a good number of black students much like A but few like B had already been admitted, the Committee might prefer B; and vice versa. If C, a white student with extraordinary artistic talent, were also seeking one of the remaining places, his unique quality might give him an edge over both A and B. Thus, the critical criteria are often individual qualities or experience *not dependent *273 upon race but sometimes associated with it.* " *Ibid.* (emphasis added).

This example further demonstrates the problematic nature of the LSA's admissions system. Even if student C's "extraordinary artistic talent" rivaled that of Monet or Picasso, the applicant would receive, at most, five points under the LSA's system. See App. 234-235. At the same time, every single underrepresented minority applicant, including students A and B, would automatically receive 20 points for submitting an application. Clearly, the LSA's system does not offer applicants the

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individualized selection process described in Harvard's example. Instead of considering how the differing backgrounds, experiences, and characteristics of students A, B, and C might benefit the University, admissions counselors reviewing LSA applications would simply award both A and B 20 points because their applications indicate that they are African-American, and student C would receive up to 5 points for his "extraordinary talent." [FN20]

> FN20. Justice SOUTER is therefore wrong when he contends that "applicants to the undergraduate college are [not] denied individualized consideration." *Post,* at 2441. As Justice O'CONNOR explains in her concurrence, the LSA's program "ensures that the diversity contributions of applicants cannot be individually assessed." *Post,* at 2432.

Respondents emphasize the fact that the LSA has created the possibility of an applicant's file being flagged for individualized consideration by the ARC. We think that the flagging program only emphasizes the flaws of the University's system as a whole when compared to that described by Justice Powell. Again, students A, B, and C illustrate the point. First, student A would never be flagged. This is because, as the University has conceded, the effect of automatically awarding 20 points is that virtually every qualified underrepresented minority applicant is admitted. Student A, an applicant "with promise of superior academic performance," would certainly fit this description. Thus, the result of the automatic distribution of 20 points is that the University ***274** would never consider student A's individual background, experiences, and characteristics to assess his individual "potential contribution to diversity," *Bakke, supra,* at 317, 98 S.Ct. 2733. Instead, every applicant like student A would simply be admitted.

It is possible that students B and C would be flagged and considered as individuals. This assumes that student B was not already admitted because of the automatic 20-point distribution, and that student C could muster at least 70 additional points. But the fact that the "review committee can look at the applications individually and ignore the points," once an application is flagged, Tr. of Oral Arg. 42, is of little comfort under our strict scrutiny analysis. The record does not reveal precisely how many applications are flagged for this individualized consideration, but it is undisputed that such consideration is the exception and not the rule in the operation of the LSA's admissions program. See App. to Pet. for Cert. 117a ("The ARC reviews only a portion of all of the applications. The bulk of admissions decisions are executed based on selection index score parameters set by the EWG"). [FN21] ****2430** Additionally, this individualized review is only provided *after* admissions counselors automatically distribute the University's version of a "plus" that makes race a decisive factor for virtually every minimally qualified underrepresented minority applicant.

> FN21. Justice SOUTER is mistaken in his assertion that the Court "take[s] it upon itself to apply a newly-formulated legal standard to an undeveloped record." *Post,* at 2442, n. 3. He ignores the fact that respondents have told us all that is necessary to decide this case. As explained above, respondents concede that only a portion of the applications are reviewed by the ARC and that the "bulk of admissions decisions" are based on the point system. It should be readily apparent that the availability of this review, which comes *after* the automatic distribution of points, is far more limited than the individualized review given to the "large middle group of applicants" discussed by Justice Powell and described by the Harvard plan in *Bakke.* 438 U.S., at 316, 98 S.Ct. 2733 (internal quotation marks omitted).

***275** Respondents contend that "[t]he volume of applications and the presentation of applicant

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information make it impractical for [LSA] to use the ... admissions system" upheld by the Court today in *Grutter*. Brief for Respondent Bollinger et al. 6, n. 8. But the fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system. See *J.A. Croson Co.*, 488 U.S., at 508, 109 S.Ct. 706 (citing *Frontiero v. Richardson*, 411 U.S. 677, 690, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973) (plurality opinion of Brennan, J.) (rejecting " 'administrative convenience' " as a determinant of constitutionality in the face of a suspect classification)). Nothing in Justice Powell's opinion in *Bakke* signaled that a university may employ whatever means it desires to achieve the stated goal of diversity without regard to the limits imposed by our strict scrutiny analysis.

[8][9][10][11] We conclude, therefore, that because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents' asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause of the Fourteenth Amendment. [FN22] We further find that the admissions policy also violates Title VI and ***276** 42 U.S.C. § 1981. [FN23] Accordingly, we reverse ****2431** that portion of the District Court's decision granting respondents summary judgment with respect to liability and remand the case for proceedings consistent with this opinion.

FN22. Justice GINSBURG in her dissent observes that "[o]ne can reasonably anticipate ... that colleges and universities will seek to maintain their minority enrollment ... whether or not they can do so in full candor through adoption of affirmative action plans of the kind here at issue." *Post*, at 2446. She goes on to say that "[i]f honesty is the best policy, surely Michigan's accurately described, fully disclosed College affirmative action program is preferable to achieving similar numbers through winks, nods, and disguises." *Ibid.* These observations are remarkable for two reasons. First, they suggest that universities--to whose academic judgment we are told in *Grutter v. Bollinger, ante*, 539 U.S., at 328, 123 S.Ct. 2325, 2003 WL 21433492, we should defer--will pursue their affirmative-action programs whether or not they violate the United States Constitution.

Second, they recommend that these violations should be dealt with, not by requiring the universities to obey the Constitution, but by changing the Constitution so that it conforms to the conduct of the universities.

FN23. We have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI. See *Alexander v. Sandoval*, 532 U.S. 275, 281, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001); *United States v. Fordice*, 505 U.S. 717, 732, n. 7, 112 S.Ct. 2727, 120 L.Ed.2d 575 (1992); *Alexander v. Choate*, 469 U.S. 287, 293, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985). Likewise, with respect to § 1981, we have explained that the provision was "meant, by its broad terms, to proscribe discrimination in the making or enforcement of contracts against, or in favor of, any race." *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 295-296, 96 S.Ct. 2574, 49 L.Ed.2d 493 (1976). Furthermore, we have explained that a contract for educational services is a "contract" for purposes of § 1981. See *Runyon v. McCrary*, 427 U.S. 160, 172, 96 S.Ct. 2586, 49 L.Ed.2d 415 (1976). Finally, purposeful discrimination that violates the Equal Protection Clause of the Fourteenth Amendment will also violate § 1981. See *General Building Contractors Assn., Inc. v. Pennsylvania*, 458 U.S. 375,

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389-390, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982).

It is so ordered.

Justice O'CONNOR, concurring. [FN*]

FN* Justice BREYER joins this opinion, except for the last sentence.

I

Unlike the law school admissions policy the Court upholds today in *Grutter v. Bollinger, ante,* 539 U.S. 306, 123 S.Ct. 2325, 2003 WL 21433492, the procedures employed by the University of Michigan's (University) Office of Undergraduate Admissions do not provide for a meaningful individualized review of applicants. Cf. *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) (principal opinion of Powell, J.). The law school considers the various diversity qualifications of each applicant, including race, on a case-by-case basis. See *Grutter v. Bollinger, ante,* 539 U.S., at 337-339, 123 S.Ct. 2325, 2003 WL 21433492. By contrast, the Office of Undergraduate Admissions relies on the selection index to assign *every* underrepresented minority applicant the same, *automatic* 20-point bonus without consideration of the particular background, experiences, or ***277** qualities of each individual applicant. Cf. *ante,* at 2428, 2429. And this mechanized selection index score, by and large, automatically determines the admissions decision for each applicant. The selection index thus precludes admissions counselors from conducting the type of individualized consideration the Court's opinion in *Grutter, ante,* 539 U.S., at 334, 123 S.Ct. 2325, 2003 WL 21433492, requires: consideration of each applicant's individualized qualifications, including the contribution each individual's race or ethnic identity will make to the diversity of the student body, taking into account diversity within and among all racial and ethnic groups. Cf. *ante,* at 2428-2429 (citing *Bakke, supra,* at 324, 98 S.Ct. 2733).

On cross-motions for summary judgment, the District Court held that the admissions policy the University instituted in 1999 and continues to use today passed constitutional muster. See 122 F.Supp.2d 811, 827 (E.D.Mich.2000). In their proposed summary of undisputed facts, the parties jointly stipulated to the admission policy's mechanics. App. to Pet. for Cert. 116a-118a. When the University receives an application for admission to its incoming class, an admissions counselor turns to a Selection Index Worksheet to calculate the applicant's selection index score out of 150 maximum possible points--a procedure the University began using in 1998. App. 256. Applicants with a score of over 100 are automatically admitted; applicants with scores of 95 to 99 are categorized as "admit or postpone"; applicants with 90-94 points are postponed or admitted; applicants with 75-89 points are delayed or postponed; and applicants with 74 points or fewer are delayed or rejected. The Office of Undergraduate Admissions extends offers of admission on a rolling basis and acts upon the applications it has received through periodic "[m]ass [a]ction [s]." *Ibid.*

In calculating an applicant's selection index score, counselors assign numerical values to a broad range of academic factors, as well as to other variables the University considers important to assembling a diverse student body, including race. Up to 110 points can be assigned for academic performance, ***278** and up to 40 points can be assigned for the other, nonacademic factors. Michigan residents, for example, receive 10 points, and children of alumni receive 4. Counselors may assign an outstanding essay up to 3 points and may award up to 5 points for an applicant's personal achievement, leadership, or public service. Most importantly for this case, an applicant automatically receives a 20 point bonus if he or she possesses any one of the following "miscellaneous" factors: membership ****2432** in an underrepresented minority group; attendance at a predominantly minority or disadvantaged high school; or recruitment for athletics.